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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~375.~~ 101

EUGENE EILENBECKER, JOHN MANDERSCHEID, JOHN MANDERSCHEID, HENRY BRAUCH, J. B. GREENEN, AND JOHN N. PEYSEN, PLAINTIFFS IN ERROR,

vs.

THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 1, 1886.

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1 Pleas before the supreme court of Iowa in a cause wherein Eugene Eilenkecker was pl'ff and The Dist. Court of Plymouth Co., Iowa, C. H. Lewis, judge, *et al.*, defendants.

Be it remembered that on the 17th day of March, 1886, there was filed in the supreme court of the State of Iowa a petition for writ of certiorari; which said writ was allowed, and was issued on the 23d day of March, 1886, and return thereto was duly made.

And subsequently, for the purpose of presenting said cause to said supreme court, the plaintiff prepared and filed a printed abstract of the record, and upon such printed abstract said cause was submitted to said court. Said abstract was filed in the office of the clerk of said supreme court on the 19th day of April, 1886, and the same, together with endorsements thereon, is in the words and figures following, to wit:

2 *Abstract of Record.*

In the Supreme Court of the State of Iowa, Council Bluffs. Term, March, 1886.

JOHN N. PEYSEN *vs.* THE DISTRICT COURT OF PLYMOUTH COUNTY, C. H. Lewis, Judge, and W. S. Welliver, Clerk of said Court.	Petition for Certiorari.
EUGENE EILENBECKER *vs.* THE DISTRICT COURT OF PLYMOUTH COUNTY, C. H. Lewis, Judge, and W. S. Welliver, Clerk of said Court.	Petition for Certiorari.
HENRY BRANCH *vs.* THE DISTRICT COURT OF PLYMOUTH COUNTY, C. H. Lewis, Judge, and W. S. Welliver, Clerk of said Court.	Petition for Certiorari.
JOHN B. GREENEN *vs.* THE DISTRICT COURT OF PLYMOUTH COUNTY, C. H. Lewis, Judge, and W. S. Welliver, Clerk of said Court.	Petition for Certiorari.

Argo & Kelly and O. C. Treadwin, attorneys for plaintiff.

Struble, Rishel & Hart, S. M. Marsh, dist. att'y, & A. J. Baker, att'y gen., attorneys for def'ts.

I hereby accept service of the within abstract & acknowledge receipt of a copy thereof Apr. 16, 1886.

C. H. LEWIS,
STRUBLE, RISHEL & HART.
A. J. BAKER, *Att'y Gen.*
S. M. MARSH.

To the supreme court of Iowa:

3 Your petitioner most respectfully represents that on or about the 18th day of June, 1885, there was filed in the office of the clerk of the district court of Plymouth county, Iowa, a petition charging that your petitioner and others were keeping and maintaining a nuisance in the city of Lemars, in the county aforesaid, such as is prohibited by chapter six, title eleven, of the Code of Iowa, and as amended by chapter 143 of the Acts of the 20th General Assembly of the State of Iowa.

That afterwards, on or about the 6th day of July, 1885, a temporary writ of injunction was issued by the judge of said court enjoining your petitioner from longer continuing said nuisance, which writ was served on your petitioner on or about the 7th day of July, 1885; that said cause then stood for trial at the October, 1885, term of said court, and still continues on the calendar of said court for trial, but has never been tried.

That at the said October, 1885, term of said court the following proceedings were had, to wit: Affidavits were filed alleging that your petitioner had violated said writ of injunction, but no rule was served on your petitioner requiring him to show cause why he should not be punished for contempt, as required by law, but a notice was served of such rule; that your petitioner appeared and filed a motion to strike said notice and affidavit from the files; which motion was overruled by the court; to which your petitioner duly excepted.

That afterwards your petitioner filed a demurrer to the affidavit or information charging him with contempt; which demurrer was overruled by the court, to which your petitioner duly excepted.

That no further proceedings were had in said cause until the March, 1886, term of said court, at which term the following
4 proceedings were had: That your petitioner, without first being served with a rule to show cause why he should not be punished for contempt by order of said court and against the objections of your petitioner, was compelled to answer said charges made in said cause against him.

That your petitioner did file a large number of affidavits and did fully and completely exonerate himself from any blame or violation of said writ of injunction, and ought to have been discharged by the court.

That the judge of said court entered on his docket a memorandum, from which the clerk of said court made a record of said court not at all in conformity with the entry or memorandum on the said docket made by the judge of said court; that said record is made to read that your petitioner shall pay a fine of five hundred dollars and be imprisoned three months in the county jail of Plymouth county. A full and complete record and transcript of the proceedings in said cause is hereto annexed and made part of this petition.

That the clerk of said court has issued a warrant for the arrest of your petitioner, and that the sheriff of said county threatens to arrest your petitioner and deprive him of his liberty, and unless a stay of proceedings is had your petitioner will be arrested and imprisoned,

as he verily believes. Your petitioner therefore avers that said district court exceeded its jurisdiction and acted illegally and erroneously, in this—

1st. In taking action in said proceedings without a sufficient affidavit, such as is required by law, as a basis for such proceedings, which affidavit did not show any personal knowledge of the affiant of the statements therein contained, and which did not contain or state sufficient facts or any facts for a basis of said action.

2d. In receiving in evidence *ex parte* affidavits and incompetent evidence, and in finding him guilty on incompetent evidence.

3d. In finding your petitioner guilty of contempt of [in] violating an injunction without proof of any order for the issuance of an injunction having been made.

4th. In punishing him for contempt without entering upon the records the evidence upon which the court acted or the facts constituting the alleged contempt, as required by law.

5th. In ordering him imprisoned in case of non-payment of fine without specifying the number of days of imprisonment.

6th. In punishing your petitioner without a trial by jury and without due process of law and in violation of sections 9, 10, and 11 of article 1 of the constitution of the State of Iowa.

7th. In trying your petitioner in a case involving his liberty on *ex parte* affidavits and denying him the right to be confronted with the witnesses against him and in violation of section 10 aforesaid of said constitution.

8th. In trying him for an offense involving punishment by fine exceeding $100.00 and imprisonment for 30 days without indictment by grand jury, in violation of section 11, article 1, of said constitution and in violation of article XIV of the Constitution of the United States.

9th. In inflicting excessive fine, cruel and unusual punishment, in violation of section 17 of article 1 of the constitution of Iowa.

Wherefore your petitioner asks that a writ of certiorari issue, directed to said district court, *is* made defendant in this proceeding, requiring and commanding it to certify up to this court fully a transcript of the proceedings and records in said causes for contempt, together with all things touching the matters herein complained of, as provided by law, and that this court make an order granting said writs and a stay of proceedings in said causes, as provided by law, and that your petitioner be admitted to bail, and that on final hearing all said proceedings in said district court be set aside, annulled, and held for naught.

ARGO & KELLY AND
O. C. TREADWAY,
Att'ys for Petitioner.

Petition duly verified.

Affidavit of G. W. Argo.

I, G. W. Argo, being duly sworn, depose and say that I am one of the attorneys for the petitioners in the above-entitled causes; that I

am familiar with all of the proceedings had in said causes. The issues and pleadings therein in each of said causes and all of them are substantially the same; that a stipulation and agreement was made between I. S. Struble, as attorney for the opposite side of said causes, and myself, as attorney for petitioners, that each and all of said causes should be tried, considered, heard, and determined upon the petitions and records in the case of Hugh Campbell *vs.* John Manderscheid and the record and petition in the case of W. H. Briggs *vs.* John Peysen; that said agreement and stipulation has been mislaid or lost, and therefore cannot be at present attached to the above petition. (Signed)

G. W. ARGO.

Sworn to before me and subscribed in my presence by said G. W Argo this 18th day of March, 1886. (Signed)

G. B. PRAY,
Clerk of Supreme Court.

The following *is* the proceedings had in the equity case commenced by Wm. H. Briggs against the defendant, John N. Peysen,
7 the proceedings in which case in every respect are the same as the proceedings in each of the other three above-entitled causes, and it being agreed by the parties that the record in each of said causes *which record* is as follows:

Petition in Equity.

Div. 1st. The plaintiff, for cause of action against the defendants, alleges—

Par. 1. That he is a resident and citizen of Lemars, Plymouth county, Iowa.

Par. 2d. That the defendant, John Draudt, is the owner of the following-described property, which is made defendant herein, to wit: Lot 1, Buchanan's subdivision of lots 16 and 17, block 9, Lemars, Iowa.

Par. 3d. That the defendant, Mrs. John Draudt, is the wife of the defendant, John Draudt, and has or claims to have some interest in said property.

Par. 4. That the defendant, John Draudt, has leased the cellar under the building situated on said lot to one or all the defendants as a saloon and for the purpose of permitting *them* to be used as such.

Div. 2. The plaintiff further alleges—

Par. 1. That the defendants, Nic Peysen, John Peysen, and Nic Schaul, now occupy the said cellar under the building mentioned in the first division of this petition, to wit, the building situated on the following-described lot, viz., lot 1, in Buchanan's subdivision of lots 16 and 17, block 6, Lemars, Iowa, and are now engaged therein in selling and disposing of lager beer and other intoxicating liquors, contrary to the statutes of Iowa, to wit, chapter six, title 11, Code of Iowa, and as amended by chapters 8 and 143, Laws of the 20th General Assembly of Iowa, thereby and by so doing constituting and maintaining a public nuisance.

Div. 3d. The plaintiff further states that within —.

8 Par. 1. In said cellar are contained certain articles of personal property, to wit, counter, shelving, bottles, glasses, chairs, kegs, ice-chests, and other articles used by said defendants in selling said intoxicating liquors, and that said personal property, as the plaintiff is informed, is the property of the defendant, Nic Gloden, and was, until recently, used by him in carrying on a saloon in a building situated on lot 1, block 6, in Lemars, Iowa.

Par. 2. That the use of said articles for the purpose of assistance in selling or disposing of intoxicating liquors is unlawful and constitutes a nuisance.

Par. 3. Wherefore the plaintiff prays—

1st. That said defendants, John and Mrs. John Draudt, be temporarily enjoined and restrained from using or permitting to be used for the purpose of keeping for sale, selling, or in any manner disposing of any kind of intoxicating liquors, including lager beer, and that on final hearing said injunction may be made perpetual.

2d. That on final hearing said cellar and any part of said premises used for such unlawful purposes be decreed a nuisance, and that the saloon be forever abated, and that an order of abatement be granted.

3d. That the defendants, Nic Peysen, John Peysen, Nic Schaul, and Nic Gloden, be temporarily enjoined and restrained from keeping for sale, selling, or in any manner disposing of any lager beer or any other kind of intoxicating liquors in said premises or any part thereof, and that on final hearing said injunction may be made perpetual.

That said defendant, Nic Gloden, be temporarily enjoined and restrained from using or permitting any of the defendants or

9 other persons from using any of the articles of personal property belonging to him, and now in said cellar and in use by said defendants, Peyson and Peyson, Schaul and Gloden, for the illegal purpose of aiding the keeping, selling, or disposing of any kind of intoxicating liquors in said premises or elsewhere in said county, — may be perpetual.

4th. That on final hearing it be adjudged and decreed that the cellar and all furniture therein contained and used as aforesaid constitute a public nuisance, and that the same be forever abated and order of abatement authorized.

5th. That plaintiff may have judgment for costs, and such other and further relief as to the court may seem just and equitable in the premises.

STRUBLE, RISHEL & SARTORI,
Att'ys for Pl'ff.

Duly verified.

On reading the within petition it is ordered that the application for a temporary injunction be heard at the office of Struble, Rishel & Sartori, in Lemars, Iowa, on Saturday, June 20th, 1885, at 10

o'clock a. m.; and witness my hand officially this 11th day of June, 1885.

C. H. LEWIS,
Judge of the 4th Jud. Dist. of Iowa.

On hearing the evidence and considering the affidavits filed for and against the motion for the issuance for a temporary injunction in this cause, it is ordered that upon and after filing with the clerk of the district court a good and sufficient bond, in the sum of $100, a temporary injunction be issued against John N. Peysen, enjoining and restraining him, his agents and employés, from selling or in any manner disposing of any kind of intoxicating liquors in or upon the premises described in said petition. Application for temporary injunction against the other defendants denied. Defendant,
J. N. Peyson, excepts to said order.

10 Witness my hand officially, at Lemars, Iowa, June 26th, 1885.

C. H. LEWIS, &c.

That said order was filed in the office of the clerk of the district court on the 6th day of July, 1885.

Writ of Injunction.

State of Iowa to John N. Peysen:

Whereas Wm. H. Briggs, as plaintiff, has heretofore filed in the office of the clerk of the district court of the State of Iowa in and for Plymouth county a petition, duly sworn to, making John N. Peysen *et al.* defendants therein, and praying that they be restrained from selling or in any manner disposing of any kind of intoxicating liquors in the cellar of the building situated on lot 1 of Buchanan's subdivision of lots 16 and 17, in block 6, in Lemars, Plymouth county, Iowa; and whereas the Honorable C. H. Lewis, judge of the 4th jud. dist. of Iowa, on June 26th, 1885, made an order allowing said writ of injunction to issue against you, said John N. Peysen, upon the filing of a bond with sureties, pursuant to said order; and whereas said order has been complied with and such bonds filed and sureties approved: Now, therefore, you, the said John N. Peysen, defendant, your agents and employés as aforesaid, are hereby strictly enjoined and restrained from keeping for sale, selling, or in any manner disposing of lager beer or any other kind of intoxicating liquors in said premises, viz., the cellar of the building situated on lot one of Buchanan's subdivision of lots 16 and 17 of block 6, in Lemars, Plymouth county, Iowa, until the further order of our district court in the premises; and this injunction you must strictly observe under the penalties of the law.

Witness my hand and seal of said district court, hereto affixed, at Lemars, Iowa, on this 6th day of July, 1885.

W. S. WELLIVER, *Clerk, &c.*

11 That said writ of injunction was duly served on said John N. Peysen on the 7th day of July, 1885.

That on the 16th day of October, 1885, plaintiff served the following notice on defendant:

To John Peysen, defendant:

You are hereby notified that by a rule of the district court of Plymouth county, Iowa, made at the present term of said court, you are ordered to show cause, on Monday, October 19th, 1885, at 9 o'clock a. m., why you should not be punished for violating the writ of injunction issued in this cause and served upon you.

Affidavit.

Filed as follows:

I, I. S. Struble, being duly sworn, depose and say that I am one of the attorneys for the plaintiff in the above-entitled cause, and have been since its commencement; that on July 6th, 1885, a writ of temporary injunction was issued out of the office of the clerk of this court, enjoining and restraining the defendants, including the defendant John N. Peysen, from keeping for sale or in any manner disposing of any kind of intoxicating liquors in the cellar under the building situated on lot one, of Buchanan's subdivision of lots 16 and 17 of block 6, in Lemars, Plymouth county, Iowa; that said writ of injunction was duly and legally served on said John N. Peysen by G. Haerling, sheriff of said county; that said service was made July 7th, 1885, and, as affiant is informed and believes, said John N. Peysen has, since said date last named, maintained and now maintains a saloon in said cellar and has been and now is keeping for sale and selling by the glass intoxicating liquors
12 in violation of the terms of said writ of injunction and contrary to the statutes of Iowa. Wherefore affiant, on behalf of plaintiff and the public, asks for a rule requiring said Peysen to show cause why he should not be punished for contempt.

(Signed) I. S. STRUBLE.

Duly verified.

That on the 13th day of October, 1885, and during the term of the district court, defendant filed the following:

Motion.

Comes now the defendants in the above-entitled action and move the court to strike from the files the affidavit and notice to show cause why defendants should not be punished for contempt, for the reason that no such proceedings can be had in an equitable action as such, but can only be brought and prosecuted in the name of the State of Iowa.

Overruled, and defendants except.

And afterwards, on the same day, defendant Peysen filed a demurrer as follows:

The defendant, John Peysen, demurs to the affidavit and information and shows the court the following grounds thereof:

1st. Because the defendant has not been served with a rule to show cause, as required by law.

2d. Because the information does not show that affiant has any personal knowledge that the said injunction has been violated.

3d. Because said information does not state sufficient facts or any facts showing a violation of said injunction.

13 4th. Because this proceeding is contrary to sections 10 and 11 of article 1 of the constitution of Iowa.

5th. Because the court has no authority to punish defendant by fine or imprisonment until after he has had a jury trial.

6th. Because the court has no jurisdiction over the defendant and no authority to put him upon his trial until after he has been presented by an indictment by a grand jury.

That said demurrer was overruled by the court; to which ruling the defendant duly excepted.

Plaintiff files the following:

Affidavit.

I, G. W. Harper, being duly sworn, depose and say that I am a resident of said county and State and have been for nearly two years last past; that I know the defendant, John N. Peysen, and his saloon, in the basement of Buchanan's subdivision of lots 17 and 18, block 6, of Lemars, Iowa; that after said Peysen opened said saloon in said cellar, last summer, I saw him almost daily about said cellar, many times standing in front of the building, and during the past months I have seen him frequently about said saloon, in front; that some time last summer, while passing on the sidewalk by said saloon, I saw said John N. Peysen behind the bar in said cellar; that I have frequently, since said Peysen opened said saloon, seen wagon-loads of beer kegs drawn up to said saloon and kegs taken out and down into said saloon.

(Signed) G. W. HARPER.

Duly verified.

I, I. Struble, being duly sworn, depose and say that I am a
14 resident of said county and State and have been for thirteen years; that I know the saloons referred to by affidavits of A. P. McLaren and others, whose affidavits will be filed in this cause, and said saloon is in the cellar on lot one of Buchanan's subdivision of lots 16 and 17 of block 6, in Lemars, Iowa. (Signed)

I. S. STRUBLE.

Duly verified.

I, A. P. McLaren, being duly sworn, depose and say that I am a resident of Woodbury county, Iowa; that I am acquainted with the above-named John N. Peysen, and have known him since about May 20th, 1885; that I am acquainted with his saloon kept in the basement of a part of the opera house, on Sixth street, in Lemars, Iowa, and have known the same since it was opened, about June,

1885; that I was in Lemars, Iowa, almost continuously from about May 20th, 1885, to July 4th, 1885; that during the latter part of June, 1885, I purchased intoxicating liquors of the said John N. Peysen at said saloon and drank the same there a number of times, said Peysen being at the time behind the bar and tending the same; I also saw him sell intoxicating liquors to numerous other persons at said saloon during the time above named; that I was in Lemars, Iowa, on October 2d and 3d, 1885, and on said Oct. 3d, 1885, in company with C. H. Hinkley, Malcom Wood, and Hartzel Ruth visited the saloon of said defendant, John N. Peysen, and while there was furnished lager beer by said defendant, John N. Peysen; that said Peysen sold beer to the other parties above named, which they then and there drank; that on said day, and while affiant and other parties above named were in said saloon, other persons came in and bought and drank intoxicating liquors furnished them by said John N. Peysen.

(Signed) A. P. McLAREN.

Duly verified.

15 We, C. H. Hinkley, Malcom Wood, and Hartzel Ruth, being duly sworn, depose and say, and each for himself says, that he is acquainted with the defendant, John N. Peysen and his saloon, in Lemars, Iowa; that on Oct. 3, 1885, they visited said saloon in company with one A. P. McLaren, and while there purchased of said defendants and then and there drank lager beer which the defendant furnished us in person, he then being behind the bar and tending the same; that said saloon is in the basement under a part of Hoyt's Opera House, upon Sixth street, in Lemars, Iowa. (Signed)

C. A. HINKLEY.
M. A. WOOD.
HARTZEL RUTH.

The court ordered that defendant be allowed until 9 o'clock on the following Saturday to file counter affidavits and have ten days in which to file written explanation, cause to be submitted thereafter in vacation within five days and to be determined in vacation as of that term; that nothing further was done in said proceedings until the February term, 1886, of said court, at which term the following proceedings were had.

Plaintiff files the following:

Notice.

To said defendant:

You are hereby notified that at the October term, 1885, an order was entered against you in said cause, requiring you, on or before the first day of the next term of said court, to show cause why you should not be punished for contempt for violating the injunction issued and served upon you in this cause, said court commencing on the 23d of February, 1886, at the court-house, in Lemars, at

which term you can appear and show cause, if you desire; that said notice was served on the defendant on the 20th day of February, 1886.

16 Whereupon the defendant filed a motion to strike from the files said notice because the same is incompetent and is not a paper provided for by law or required in proceedings of this kind. Motion overruled, and defendant excepts.

Defendants object to this proceeding and trial because the court has no jurisdiction to try the defendants without a jury. Defendants have not been indicted, and we ask that this objection apply and be considered made to all of the cases in hearing at this time.

Plaintiff files notice of rule and service thereon. Defendant objects for the reason that there is no case pending before this court upon which this testimony is admissible, there being no cause now on trial, and the same is incompetent, immaterial, and irrelevant. Objection overruled; defendant excepts.

Plaintiff offers in evidence the writ of injunction heretofore issued with the return of the officer thereon. Same objection as last above. Same ruling by the court and defendant excepts.

Defendant's Evidence.

I, John N. Peysen, being duly sworn, depose and say that I am the defendant in the above-entitled action, and also defendant in the contempt proceeding instituted by plaintiff against me for an alleged violation of the writ of injunction issued therein; that on the 10th day of June, 1885, I rented the room and premises described in the affidavit of I. S. Struble, filed in this proceeding, and on the 30th day of June commenced business therein as a saloon-keeper, and afterwards, on some day in July—the date I do not now remember—I was enjoined by a writ of injunction issued in

17 said cause; that immediately upon the service of said writ upon me, and without doing any further business and without making any sales of intoxicating liquors whatsoever, and on the same day I sold my business and stock on hand and assigned my lease of said room to other parties, and have not since said date been engaged in keeping said saloon or any other saloon, in selling or giving away any intoxicating liquors of any kind whatever. I further depose and say that on the 2d day of October, 1885, I left Lemars and went to Waterloo, in this State, where I remained until the 7th day of October, 1885, when I returned to Lemars; that I have never intended to disobey said writ of injunction nor to commit any contempt of court, but it is now and always has been my intention and purpose to obey said injunction fully, and all other orders and writs of said court and of the judge thereof.

JOHN N. PEYSEN.

Duly verified.

I, Henry Ney, being duly sworn, depose and say that I reside in the city of Lemars, and have resided in Lemars for about 18 months last past; that I am acquainted with John N. Peysen and know the

saloon formerly kept by him and described in the affidavit of I. S. Struble filed in this proceeding; that I know the time that the said John N. Peysen was served with a writ of injunction in said cause, enjoining him from selling or giving away any intoxicating liquors in said saloon; that immediately thereafter I was employed by the parties to whom he sold said saloon business to tend bar in said saloon, and worked for them as bar-tender from that time until the 22d day of July, 1885, and that said John N. Peysen did not wait on any customers of said saloon or sell or offer to sell or give away any intoxicating liquors of any kind whatsoever in said saloon, having been present in said saloon tending bar and the business of said saloon every day during said period from the time said
18 saloon was opened in the morning until 8 or 9 o'clock at night.

HENRY NEY.

Duly verified.

I, Kate Peysen, on oath depose and say that I am the wife of John Peysen, the defendant in this contempt proceeding of an alleged violation of the writ of injunction issued in the above-entitled cause; that I know of my own personal knowledge that my said husband was not in Lemars during the first week in October, 1885, for the reason that he left Lemars for Waterloo, Iowa, Friday morning, at 4 o'clock a. m., October 2d, 1885, on the freight train, and did not return until the following Wednesday, being October 7th, 1885.

KATIE PEYSEN.

Duly verified.

I, George Verhueyl, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars; that I know of my own personal knowledge *that* the defendant, John N. Peysen, the defendant in the contempt proceedings for an alleged violation of the writ of injunction issued in the above-entitled cause; that I know of my own personal knowledge that the said John N. Peysen was not in the city of Lemars October 3d, 1885; that I know it was said date because I was in said saloon on said day, it being the first Saturday in October, and I met Mr. Jones, a conductor on an Illinois Central freight train, who told me that he had taken John N. Peysen to Waterloo the previous morning. I well remember the circumstance, since I was working on a farm and quit on the first day of October, 1885, and on the Saturday following, being the 3d day of October, 1885, I happened to be in said saloon referred to where said conversation occurred. Mr. Ed. Dykstra was also present at that time.

GEORGE VERHUEYL.

Duly verified.

19 I, A. Dykstra, on oath depose and say that I am a citizen and resident of the city of Lemars; that I know of my own personal knowledge *that* the defendant, John N. Peysen, the defendant in the contempt proceeding for an alleged violation of the writ

of injunction issued in the above-entitled cause; that I know of my own personal knowledge that said John N. Peysen was not in the city of Lamars on the 3d day of October, 1885; that I know it was said date because I was in said saloon on said day, and in there met Mr. Jones, a conductor on an Illinois Central freight, who told me that he had taken John N. Peysen to Waterloo the previous morning. I well remember the circumstance, it being the first Saturday in October. George Verhueyl, who had been working on a farm, was present when this conversation was had with Mr. Jones in the saloon referred to. He had quit working on the farm on the 1st of Oct., and our meeting occurred on the first Saturday after that.

A. DYKSTRA.

Duly verified.

Decree.

And now, to wit, on this 8th day of March, A. D. 1886, it being at the regular term of the district court of Plymouth county, Iowa, this coming on to be heard upon the affidavit and complaint of I. S. Struble, filed in said cause on October 24th, 1885, charging as against the defendant, John Nic Peysen, that he had violated the writ of injunction issued in this cause, the plaintiff appearing by Struble, Rishel & Hart, his attorneys, and the defendant, John Nic Peysen, by his attorneys, Argo, Kelly & Augir and O. C. Treadway, and the court, upon an inspection of the pleadings, notices, and writ of injunction, return of the officer as to the service of said writ of injunction, find that the following proceedings have been had in its cause, viz: That on the 7th day of July, 1885, a temporary writ of injunction was, on the order of Honorable C. H. Lewis, judge of the 4th judicial district of Iowa, issued in this cause out of the office of the clerk of the district court of said county, against the defendant, John Nic Peysen, enjoining and restraining him from keeping for sale, selling, or in any manner disposing of lager beer or any other kind of intoxicating liquors in the cellar of the building situated on lot No. one of Buchanan's subdivision of lots No. sixteen (16) and seventeen (17), of block (6), in Lemars, Plymouth county, Iowa, until the further order of the district court of said county and State; that on July 7th, 1885, said writ of temporary injunction was duly served on the defendant, John Nic Peysen, by G. Haerling, sheriff of said county and State; that on October 24th, 1885, an affidavit and complaint — executed by I. S. Struble, one of the attorneys for plaintiff in this action, alleging the issuance and service of said writ of injunction in substance as set forth above in this decree and charging that the defendant, John Nic Peysen, was then and for some months past had been engaged in selling intoxicating liquors upon said premises described in said writ of injunction contrary to law and the terms of said writ, and asking for a rule upon said defendant, John Nic Peysen, to show cause, on or before the first day of the next term of this court, why he should not be punished for contempt of court; that on said day last named a rule was granted on said defendant, John Nic Peysen, as prayed, the court, having no personal knowledge

of the facts charged, requiring him to show cause, on or before the first day of the next regular term, to wit, February 23, 1886, why he should not be fined for contempt for violating said writ of injunction; that on the 20th day of February, 1886, a notice of the granting of said rule was duly served on said defendant, John Nic Peysen, which notice was this day filed in said cause; and thereupon the defendant, John Nic Peysen, filed a motion to strike said notice of rule from the files, which motion was overruled, and the de-
21 fendant excepted to such ruling; and now, this cause being at hearing upon the affidavits filed by the plaintiff, on October 23d, 1885, to wit, I. S. Struble, A. P. McLaren, C. A. Hinkley, M. A. Wood, Hartzel Ruth, and G. W. Harper, in support of the affidavit and complaint of I. S. Struble, charging the defendant, John Nic Peysen, with violating the writ of injunction issued in this cause and upon the following affidavits and complaints, to wit: The affidavit of said defendant; also Henry Ney, Kate Peysen, George Verhueyl, and A. Dykstra; and the court upon considering all of said affidavits filed by both plaintiff and defendant, John Nic Peysen, together with the writ of injunction and the return of the officer thereon, showing service of said writ upon defendant, John Nic Peysen, finds the following facts in addition to those hereinbefore in this decree recited, viz: That the defendant, John Nic Peysen, violated said writ of injunction by selling and disposing of intoxicating liquors in the premises described in the petition in this cause and the writ of injunction issued therein and after the service of said writ upon him, contrary to and in violation of said writ of injunction and the statutes of Iowa prohibiting the sale of intoxicating liquors, and is therefore guilty of a contempt under chapter 143, Laws of the 20th General Assembly of Iowa; it is therefore ordered, adjudged, and decreed by the court that defendant, John Nic Peysen, pay to the clerk of the district court of Plymouth county, Iowa, to be dealt with and disposed of by him according to law, a fine of five hundred dollars, and that he be imprisoned in the jail of said county for the period of three months from and after the day he is first imprisoned therein in accordance with this order, and that a warrant be issued by the clerk of the district court of said county and State authorizing and requiring the sheriff of said county to execute this judgment. It is further ordered that if within thirty (30) days from this time the defendant, John Nic Peysen, shall pay the fine hereby
22 adjudged against him he shall be released from confinement and so much of this sentence as relates to confinement shall be remitted; but if he does not pay the said fine he shall be confined in the said county jail for the full period of three months, as hereinabove in this decree named; to all of which findings the defendant, John Nic Peysen, duly excepted.

That the above decree was prepared by the attorneys for the plaintiff after the adjournment of said term of court, handed to the clerk of said court, and by him copied in the records, but never signed by the judge or approved by him or the court.

That the above and foregoing is certified by the clerk of said district court — be a true, correct record of all the proceedings had and

papers filed in said cause; which certificate is in the ordinary form, with the seal of the court affixed thereto.

THE STATE OF IOWA, *ss:*

To Hon. C. H. Lewis, judge of the district court, 4th judicial district of Iowa, and W. S. Welliver, clerk of said court, in and for Plymouth county:

Whereas there was lately filed in the supreme court of Iowa the petition of John N. Peysen, wherein it is alleged, in the matter of the imposition of a fine of five hundred dollars for an alleged violation of the terms of a certain injunction lately issued under an order of said district court, error hath been committed;

And whereas said supreme court, on the 19th day of March, 1886, directed that a writ of certiorari for the removal of said cause to said court be issued, and that further proceedings be stayed upon the petitioner filing a bond as provided in each order:

23 Therefore it is commanded that you certify to the supreme court, fully and correctly, the record of the matters and things complained of, together with the facts in connection therewith, in order that the error, if any hath been made, may be corrected, and you will make return to this writ on or before the third Monday of April, 1886.

Witness my signature and the seal of the supreme court this 23d day of March, 1886.

G. P. PRAY,
Clerk Sup. Court.

I admit personal service of the original writ, of which the foregoing is a copy, by the delivery to me of such original writ at Sioux City, Iowa, March 28th, 1886.

C. H. LEWIS.

A writ like the above was served at the same time and in the same manner on the defendants in each of the other cases, to wit, Eugene Becker *vs.* C. H. Lewis *et al.*, Henry Brauch *vs.* C. H. Lewis *et al.*, and J. B. Greenen *vs.* C. H. Lewis *et al.*

The following is all the testimony, including the affidavit and complaint of I. S. Struble and all other affidavits and evidence, used in the hearing of the proceeding for contempt in the case and proceeding against Eugene Eilenbecker *et al.:*

STATE OF IOWA,)
Plymouth County,) *ss:*

I, I. Struble, being duly sworn, depose and say that I am a resident of Lemars, Iowa, and have been for more than 13 years last past, and that the saloon mentioned in the affidavits of A. P. McLaren, M. A. Wood, and others, filed in this case, is situated on west 25 feet of lot 5, bl'k 5, Lemars, Iowa.

I. S. STRUBLE.

Duly verified.

I, Wm. H. Briggs, being duly sworn, do depose and say that I am a resident of said county and State; that I am acquainted with the defendant Eilenbecker and his saloon on Sixth street, to wit, on west 25 feet of lot 5, bl'k 5, Lemars, Ia.; that during the past few months I have seen the defendant Eilenbecker at and about said saloon, and a few weeks ago saw him washing the front windows of said saloon. I also depose and say that I have several times within the past few months seen said Eilenbecker washing the front windows of said saloon.

W. H. BRIGGS.

Duly verified.

I, A. P. McLaren, being duly sworn, do depose and say that I am a resident of Sioux City, Iowa; that I am acquainted with Eugene Eilenbecker, one of the above-named defendants, and have known him since about May 20th, 1885; that I was in Lemars, Iowa, from about that date to and until July 4th, 1885, almost all the time; that during the latter part of June, 1885, I purchased lager beer of the defendant, Eugene Eilenbecker, at his saloon in the frame building on Sixth street, in Lemars, Iowa, being the next door east from the post office in said city; that I was in said saloon frequently from the time it was reopened until I left said city, on July 4th, 1885, and that said Eugene Eilenbecker was in and about said saloon nearly all the time I was in the same; that I saw said Eilenbecker go behind the bar in said saloon and help himself to cigars. I further depose and say that I frequently saw said Eilenbecker drink lager beer at said bar with others, but never saw him pay for any of said beer; that I was in Lemars, Ia., on Oct. 3d, 1885, and, in company with C. H. Hinkley, Malcom Wood, and Hartzel Ruth, visited said saloon and drank lager beer at the bar in said saloon; that one Fred. Neth was attending to said bar and furnished the beer to myself and the other parties above named, but that defendant Eilenbecker stood at the time at the end of the bar and saw the beer handed to affiant and the other persons above named and made no objection to our drinking said beer; that during the time we were in said saloon on said October 3d, 1885, numerous other persons came in and purchased beer and other liquors at said bar of said Neth and in the presence of the defendant, Eugene Eilenbecker, to which sale and the drinking of the same he made no objections; that I remember to have seen the following-named persons selling intoxicating liquors at said saloon since it was reopened in June, 1885, to wit: J. P. Steines, Nic. Schaul, and Fred. Neth, but during all the time I was in Lemars, Iowa, the said Eugene Eilenbecker was in and around said saloon.

A. P. McLERAN.

Duly verified.

I, M. A. Wood, being duly sworn, do depose and say that I am a resident of said county and State; that I am acquainted with the defendant, Eugene Eilenbecker, and his saloon on Sixth street, one door east of the post office, Lemars, Iowa; that on July 9th, 1885, I

visited said saloon and bought of said Eugene Eilenbecker one glass of wine at his bar, which he in person handed to me, which I then and there drank and paid for; that said defendant, Eilenbecker, was at that time, to wit, about noon, tending the bar in said saloon.

M. A. WOOD.

Duly verified.

We, C. A. Hinkley, Malcom Wood, and Hartzel Ruth, being duly sworn, do depose and say, and each for himself says, that he is a resident of said county and State; that he knows the defendant, Eugene Eilenbecker, and his saloon on Sixth street, Lemars, Iowa, one door east of the post-office; that on Oct. 3d, 1885, each of the affiants, with one A. P. McLeran, went to said saloon, and while there bought lager beer at the bar, which was sold them by one Fred. Neth, who was then attending the bar; and affiants Wood and Ruth say that at the same time, and when said Neth handed affiants and said McLaren the beer referred to, the defendant, Eugene Eilen-
26 becker, was standing at the end of the bar and near affiants, and saw said Neth hand out said beer and said affiants and McLaren drink the same, but made no objection thereto.

C. A. HINKLEY.
MALCOM WOOD.
HARTZEL RUTH.

Duly verified.

I, Eugene Becker, on oath depose and say that I am one of the defendants in the above-entitled proceedings for contempt for an alleged violation of the writ of injunction issued against me and served on me restraining me from selling or disposing of or giving away intoxicating liquors in the saloon building situated on the premises described in the affidavit of I. S. Struble filed herein; that I know that the said writ of injunction was served on me by the sheriff of said county during the summer of 1885; that as soon as the same was so served I desisted from the sale of intoxicating liquors or from giving the same to any person whatsoever, and very soon thereafter sold and disposed of my saloon business and all of my interest therein and stock on hand to other parties, and have not since the service of said writ of injunction upon me owned or controlled said saloon or sold or offered for sale or gave away therein any intoxicating liquors whatsoever; that I never intended to violate the terms of said writ of injunction or to commit any contempt of court. but that I have always intended to comply with the terms of said injunction and all orders and mandates of said court and of the judge thereof.

EUGENE BECKER.

Duly verified.

I, Arthur Hebb, upon oath depose and say that I am 26 years of age and by profession a printer, and have been engaged as foreman of the "Globe" office for the past year; that I have resided in Lemars for the past two years; that I remember the time when the

said defendant was enjoined from selling or disposing of or giving away intoxicating liquors in the building described in the
27 above-entitled action; that I know that immediately after he was so enjoined he desisted from making any sales, and very soon thereafter informed me that he had sold out the said saloon business and had nothing further to do therewith; that I have been in said saloon quite a number of times since the said injunction was served upon him, but have never seen him behind the bar waiting on customers or selling or offer- to sell or give away any intoxicating liquors in saloon or any other place in Lemars.

ARTHUR HEBB.

Duly verified.

I, W. H. Philleo, being duly sworn, depose and say that I am a resident and citizen of the city of Lemars, in said county, and have resided in said city for upwards of three years, and am well acquainted with Eugene Becker, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the time when he was enjoined from selling or disposing of or giving away intoxicating liquors in Lemars; that I have personal knowledge of the fact that, as soon as he was enjoined, he sold out his business to other parties, who have since carried on the same in said building, as I am informed and believe; that I have been in said saloon almost every day and on some days several times, and during the period from the time the said business was purchased by said other parties and until the commencement of this action I have never seen said Eugene Becker behind the bar waiting on customers of said saloon or selling or giving away to any person any intoxicating liquors of any kind whatsoever.

W. H. PHILLEO.

Duly verified.

I, Carl Furchner, depose and say that I am acquainted with Eugene Becker, the defendant in the proceeding brought in this court, as also with his codefendant, John P. Medinger, in the case wherein Hugh Campbell is plaintiff and Eugene Becker *et al.* are de-
28 fendants; that I know, of my own personal knowledge, of the said Becker being enjoined in said cause from selling or disposing of any intoxicating liquors on the premises therein described; that immediately after the service of said injunction upon him he sold and disposed of his interest in said property and sold out his saloon business, and has not since said time been interested, either directly or indirectly, in the keeping of any saloon or in the sale of any beer or other intoxicating liquor in the city of Lemars.

CARL FURCHNER.

Duly verified.

I, John C. Morris, being duly sworn, depose and say that I am a resident and citizen of the city of Lemars, in said county, and have resided in said city for upwards of 14 years, and am well acquainted with Eugene Becker, the defendant in this action or proceeding;

that I know of my own personal knowledge of the date when the said Eugene Becker was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and I have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to another party, who has carried on the same since then, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the other parties until the commencement of this action I never saw said Eugene Becker behind the bar or sell or give to any person any intoxicating liquors of any kind, or wait on any customer of said business, although I have sometimes seen him drink with others outside of the bar.

JOHN C. MORRIS.

Duly verified.

I, Albert Metzmeyer, being duly sworn, depose and say that I am twenty-eight years of age; that I have lived in Lemars, in said county, for over two years past, and have been engaged in 29 clerking for Spring Brothers in the hardware and machine business; that I am well acquainted with the defendant, Eugene Becker, and know when the writ of injunction was served upon him in the above-entitled cause, and I know from my own personal knowledge that immediately upon having said injunction served upon him he sold out his saloon business and has not since been connected with or had any interest therein; that I have been in said saloon building and in said saloon almost every day since the same was transferred from him to other parties, and during the whole time of the service of said injunction to the present I have never seen him selling or offering to sell or give away any intoxicating liquors whatsoever, but that he has informed me on more than one occasion that he has nothing to do with the business.

ALBERT METZMEYER.

Duly verified.

I, P. K. Edwards, being duly sworn, do depose and say that I am a resident and citizen of the city of Lemars; that I have resided in said city upwards of five years, and am well acquainted with Eugene Becker, the defendant in this action or proceeding; that I know of my own personal knowledge of about the date and of the circumstance when said Eugene Becker was enjoined from selling or disposing of intoxicating liquors in Lemars; that I have personal knowledge of the fact that as soon as he was enjoined he sold out his business to other parties, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased by other parties and until the commencement of this action I have never seen said Eugene Becker behind the bar waiting on customers of said saloon or selling or giving away to any person any intoxicating liquors whatsoever.

P. K. EDWARDS.

Duly verified.

I, John Engalls, upon oath depose and say that I have re-
30 sided in the city of Lemars for the last five years; that I have been policeman of said city and deputy marshal for about one year last past; that I am well acquainted with Eugene Becker, the defendant in this action; that I know of my own personal knowledge of the time when he was so enjoined from disposing of or selling intoxicating liquors in his building described in the petition in said cause and in said writ of injunction, and know that as soon as he was so enjoined he stopped selling, in obedience to said injunction, sold out his saloon business, and has not since that time been engaged or interested in keeping said saloon or any saloon in the city of Lemars or in the sale of any intoxicating liquors whatsoever; that I have often been in said saloon since the same was disposed of by him, and that I have never seen said Eugene Becker wait upon any customer of said saloon or sell or give away to any customer or any person any kind of intoxicating liquors, although I have seen him in said building and occasionally patronizing the bar like other customers.

JOHN ENGALLS.

Duly verified.

I, J. C. Hayward, being duly sworn, depose and say that I am a resident and citizen of the city of Lemars, in said county, and have resided in said city upwards of 15 years, and am well acquainted with Eugene Becker, defendant in this action or proceeding; that I know of my own personal knowledge of the date when said Eugene Becker was enjoined from selling or disposing of or giving away intoxicating liquors in Lemars; that I have personal knowledge of the fact that as soon as he was enjoined he sold out his business to other parties, who have carried on the same in said building, as I am informed and believe; that I have been in said saloon almost every day and some days several times, and during the period from the time said business was purchased by said other parties
31 and until the commencement of this action I have never seen said Eugene Becker behind the bar waiting on customers of said saloon or selling or giving away to any person intoxicating liquors of any kind whatsoever.

J. C. HAYWARD.

Duly verified.

The following is all the evidence, including the affidavit and complaint made by I. S. Struble and all of the other affidavits and evidence used and had in the hearing and proceeding against Henry Brauch for contempt at said term of court:

I, I. S. Struble, being duly sworn, do depose and say that I am acquainted with Henry Brauch, Sr., def't, or Henry Brauch, as he is commonly known and called, and his saloon and hotel, and that the same is situated on the east part of lot 5, in block 5, in Lemars, Iowa, and that the hotel is known as the Grand Central.

I. S. STRUBLE.

Duly verified.

We, C. A. Hinkley, Malcom Wood, and Hartzel Ruth, being duly sworn, depose and say and each for himself says that he is a resident of said county, and states that he knows the def't, Henry Brauch, Sr., and his saloon and hotel in Lemars, Iowa, situated, as we are informed and believe, on part of lot 5, in block 5, in said city; that on October 3d, 1885, each of the affiants, in company with each other, visited the saloon of Henry Brauch, and while there were furnished wine to drink by said Henry Brauch, Sr., the said Brauch being then and there in attendance upon said bar and being engaged at the time in selling lager beer and other intoxicating liquors to customers at said bar.

C. A. HINKLEY.
M. A. WOOD.
HARTZEL RUTH.

Duly verified.

32 I, Henry Brauch, on oath depose and say that I am one of the defendants in the above-entitled cause and also defendant in the contempt proceeding instituted by plaintiff herein for an alleged violation of the writ of injunction enjoining me from maintaining or keeping or selling or offering to sell or give away intoxicating liquors in a certain room in the Grand Central Hotel building, in Lemars, Iowa; that immediately upon the service of said injunction upon me I desisted from any further business as a saloonkeeper or making sales of any intoxicating liquors in said saloon, and immediately thereafter sold and disposed of my said saloon business and stock on hand, and have never since the service of said writ of injunction upon me owned or controlled said saloon or the business conducted therein, nor have I sold or given away any kind of intoxicating liquors whatsoever in said saloon since said time, either for myself or as the agent, servant, or employé of any other person. I further depose and say that I was not in Lemars on the 3d day of October, 1885, until after the incoming of the 6.30 p. m. St. Paul passenger train of said day; that on Saturday, the 26th day of September, 1885, I went to St. Paul, and from there to St. Cloud, to look after my son, who was attending college at that place, and did not return therefrom until as above stated; that I never intended to disobey the said writ of injunction served on me as aforesaid nor to commit any contempt of court, but it has always been my intention and purpose to obey all orders, writs, and mandates of said court and of the judge thereof.

HENRY BRAUCH.

Duly verified.

I, Peter Rechtfertig, on oath depose and say that I am 24 years of age and a tinner by trade, and am employed at my trade by W. P. Moon, dealer in hardware and tinware, in Lemars, Iowa; that I have been employed as above stated for the past three years, and that I have boarded at the Grand Central Hotel, kept by
33 Henry Brauch, in said city, for the last two years; that I know the time when the injunction was served upon the said Henry

Brauch, and that he is the defendant in the case of G. N. Thompson against Henry Brauch and others, now pending in this court on proceedings for contempt; that since the service of the said injunction upon him I have been in and out of the saloon described in the affidavit in this cause several times every day, and was there a considerable portion of almost every evening, and that I have never seen said Henry Brauch behind the bar waiting on customers of said saloon or selling or disposing of or giving away any intoxicating liquors of any kind whatsoever; that I know of my own personal knowledge that Henry Brauch left Lemars for St. Paul on Saturday, September 26th, 1885, and did not return therefrom until the incoming of the St. Paul train at 6.30 p. m. of Saturday evening, October 3d, 1885.

PETER RECHTFERTIG.

Duly verified.

I, J. C. Clos, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars; that I have resided in said city for the past 8 years; that I remember the time the injunction was served upon the said Henry Brauch, the defendant in this case or proceeding; that I visited the saloon occasionally, and that from the 16th day of October for about a week I was engaged in wall-papering in the saloon referred to in the affidavit of I. S. Struble; that during said time and during my visits to said saloon I never saw the defendant, Henry Brauch, sell or give away any intoxicating liquors whatsoever nor stand behind the bar and wait on customers since the time said injunction was served on him; that I know of my own personal knowledge that Henry Brauch was not present on the 2d day of October, 1885, in said premises; that he had been to St. Paul and returned on the 6.30 p. m. St. Paul train, as I was informed and believe; that the reason that I am so positive
34 of the facts above stated arises from the fact that I have refreshed my memory by referring to my time book, in which I keep my time when I take and perform jobs of painting and papering, and know that I was present at said saloon on said 3d day of October, 1885, and inquired for said Henry Brauch, Sr., being desirous of seeing him in regard to a job of papering, but did not see him there, but was informed that he was in St. Paul.

J. C. CLOS.

I, John Koetz, upon my oath depose and say that I am a resident of the city of Lemars and have lived in said city for about 15 years last past, and am engaged in the business of general merchandising; that I am well acquainted with Henry Brauch, Sr., the defendant in the cause now pending in this court, wherein G. N. Thompson is plaintiff and Henry Brauch *et al.* are defendants, and my store is next door to the hotel now kept by Henry Brauch and the saloon formerly kept by him; that I know the date the injunction was served upon him in the above-entitled cause, by which he was enjoined from selling or giving away intoxicating liquors in said saloon; that since the said injunction was served upon him I have been in

said saloon frequently and have never seen him behind the bar waiting on customers of said saloon or selling or giving away any intoxicating liquors; that I know of my own personal knowledge that said Henry Brauch left Lemars on Saturday, September 26th, 1885, and was absent from that time until the incoming of the St. Paul train, at about 6.30 p. m., Saturday, October 3d, 1885; that when said Henry Brauch left for St. Paul as aforesaid he came into my store and told me to let his people have what goods they needed for use in the hotel until his return, as he expected to be absent for a week or so, and that on the evening of Saturday, October 3d, 1885, he came into my store and said that he had just returned that evening from St Paul, and settled his account with me.

JOHN KOETZ.

Duly verified.

35 I, Frank Miller, on oath depose and say that I am a resident and citizen of the city of Lemars and have lived in said city for about ten years, and am engaged in the business of general merchandising; that I am well acquainted with Henry Brauch, Sr., the defendant in the cause now pending in this court, wherein G. N. Thompson is plaintiff and Henry Brauch and others are defendants, my store being next door to the hotel now kept by said Henry Brauch and the saloon formerly kept by him; that I know of the date of the injunction served on him in the above-entitled cause, by which he was enjoined from selling or giving away any intoxicating liquors in said saloon; that since the said injunction was served upon him I have been in said saloon frequently and have never seen him behind the bar waiting on customers of said saloon or selling or giving away any intoxicating liquors; that I know of my own personal knowledge that said Henry Brauch left Lemars on Saturday, September 26th, 1885, for St. Paul, and was absent from that time until the incoming of the train from St. Paul, at about 6.30 p. m. of Saturday, October 3d, 1885; that when Henry Brauch left for St. Paul as aforesaid he came into my store and told me to let his people have what goods they needed for use in the hotel until his return, as he expected to be absent for a week or so; that on the evening of Saturday, October 3d, 1885, he informed me that he had just returned from St. Paul, and settled his account with me.

FRANK MILLER.

Duly verified.

I, Fred. Becker, on oath depose and say that I am county auditor of said county; that I have lived in Lemars for the past six years, and have been acquainted with Henry Brauch, the defendant in the case of G. N. Thompson against Henry Brauch *et al.*, for more than four years and know the saloon described in the affidavits in this case, formerly kept by him; that I know of my own
36 personal knowledge that said Henry Brauch was not in Lemars during the day of October 3d, 1885, but returned to Lemars; that he returned to Lemars on the 6.30 p. m. St. Paul

train that evening. The reason of my knowing this fact is because I was intending to go out into the country on Sunday, October 4th, 1885, and called at his hotel Saturday, October 3d, 1885, to get his son Peter to go out with me, and he said his father was at St. Paul, but he expected him home that night, and if he came, then he (Peter) could go with me. I called again the same evening and saw Henry Brauch, and was informed by him that he had just returned that evening on the St. Paul train, at 6.30 p. m. of said 3d day of October, 1885; that I know when the said Henry Brauch was enjoined in said cause, and since that time I have been in said saloon frequently, but never saw him waiting on customers of said saloon or selling or giving away any intoxicating liquors or exercising any authority or control of the business there conducted.

FRED. BECKER.

Duly verified.

M. A. Wood, Hartzel Ruth, and C. A. Hinkley, being duly sworn, do say, and each for himself says, that he is one of the affiants in an affidavit filed in this cause, in which each of the affiants, with one A. P. McLaren, swore that on October 3d, 1885, they and each of them purchased intoxicating liquors of said Henry Brauch, Sr., at the place set forth in said affidavit, and we do each say that we procured said liquors of said Henry Brauch, Sr., defendant, in the evening of said 3d day of October, 1885; the exact hour we cannot now more definitely state.

M. A. WOOD.
C. A. HINKLEY.
HARTZEL RUTH.

Duly verified.

37 The following is all of the evidence, including the affidavits and complaint made by I. S. Struble and all of the other affidavits and evidence, used and had in the hearing and proceedings against John B. Greenen for contempt at said term of court:

I, I. S. Struble, being duly sworn, do depose and say that I am a resident of said county and State; have been for 13 years last past; that I am acquainted with the hotel and saloon of defendant and referred to by A. P. McLeran and C. A. Hinkley, filed herein, and that the same is situated on lot 7, bl'k 2, Lemars, Ia.

I. S. STRUBLE.

Duly verified.

C. A. Hinkley, being duly sworn, deposes and says that he is a resident of Plymouth county, Iowa; that he knows the defendant, John B. Greenen, and his saloon and hotel, in Lemars, called the Eastern House; that on Oct. 3d, 1885, the affiant, in company with one A. P. McLeran, went to said saloon and hotel, and while there purchased of said Greenen lager beer, which beer he in person handed out and for which he received pay; that said Greenen went

in person behind the bar and waited upon affiant and said A. P. McLeran and sold them the said beer.

C. A. HINKLEY.

Duly verified.

I, A. P. McLeran, being duly sworn, do depose and say that I am acquainted with the defendant, John B. Greenen, and know his place of business in Lemars, Iowa, to wit, the saloon and hotel called the Eastern House, situated on Sixth street, in said Lemars, Iowa. I further depose and say that on the 3d day of October, 1885, I visited the defendant's saloon in company wtth C. A. Hinkley, and while there the defendant sold and in person delivered to each of us lager beer, which we then and there drank; that the sale of said beer was made by defendant in the front room of the front floor of said hotel and saloon; that there is a regular saloon bar in said room,
38 with bottles and glasses, and that defendant went behind the said bar in person and handed the same to affiant and the other parties named; that the said hotel and saloon is a brick or veneered two-story building and, as affiant is informed and believes, is situated on lot No. 7, in block 2, Lemars, Iowa.

A. P. McLERAN.

Duly verified.

Defendant's Affidavit.

I, John B. Greenen, being duly sworn, depose and say that I am the defendant in the above-entitled cause; that at the time I was enjoined in said cause I was conducting a saloon in the Eastern House, in Lemars, Iowa; that immediately thereafter I sold out my said saloon business and have not since that time owned or controlled any saloon or had any interest in the saloon business in Lemars; that I have not for myself or as the employé of any other person sold or given away any intoxicating liquors in Lemars, Iowa, since the date of the service of the writ of injunction upon me; that I never designed nor intended to disobey said injunction nor to commit any contempt of court, neither do I think I have so done, but it has always been my intention to obey all orders and writs of said court and the judge thereof and to comply in all respects with the orders and mandates of said court and the judge thereof.

J. B. GREENEN.

Duly verified.

I, Elizabeth Greenen, on oath depose and say that I am the wife of the defendant in the above-entitled cause and in the contempt proceedings therein for an alleged violation of the injunction issued in said cause; that I know the time that my said husband was served with the writ of injunction and know from my own personal knowledge that he immediately thereafter sold out his said saloon business and has never since said time owned or controlled said saloon business in said building described in the affidavit of I. S. Struble, filed herein, and that he has never been employed

39 by the parties conducting said business to sell, dispose of, or give away any intoxicating liquors whatsoever therein.

ELIZABETH GREENEN.

Duly verified.

40 And said cause was in said supreme court tried upon said printed record (appellant's abstract), and on the 23d day of June, 1886, said cause was decided and final judgment entered, said judgment entry being in the words and figures following, to wit:

"EUGENE EILENBECKER, Pl'ff,
vs.
THE DIST. COURT OF PLYMOUTH COUNTY, } From Plymouth Dist. Court.

In this cause, the court, being fully advised in the premises, file their written opinion, affirming *affirming* the judgment and orders of C. H. Lewis, judge of the dist. court. It is therefore considered that the judgment of the court below be, and it is hereby, affirmed, and that a writ of *procedendo* issue accordingly. It is further considered by the court that the pl'ff pay the costs of this court, taxed at $7.25, and that execution issue therefor."

The opinion filed in said cause is in the words and figures following, to wit:

41 "12123.

John Manderscheid, Appellant,
vs.
The District Court of Plymouth County.

12124.

Same, Appellant,
vs.
Same.

12125.

Eugene Eilenbecker, Appellant,
vs.
Same.

12126.

Henry Brauch, Appellant,
vs.
Same.

12127.

John B. Greenen, Appellant,
vs.
Same.

12128.

John N. Payson, Appellant,
vs.
Same.

Proceeding in certiorari to test the validity of an order of fine and imprisonment made for an alleged contempt of court.

The writ was issued in each case.

Argo & Kelly, F. O. Donnell, and O. C. Treadway, for plaintiffs; Struble, Kishel & Hart, S. M. Marsh, and A. J. Baker, att'y gen., for defendant.

ADAMS, *Ch. J.*:

42 These cases are similar in mosts respects in regard to the facts, and they are submitted together.

On the 18th day of March, 1886, the district court of Plymouth county adjudged the plaintiffs in the above-entitled cases to be in contempt in violating certain writs of injunction issued to restrain them from maintaining a nuisance by selling intoxicating liquors upon certain described premises in violation of law, and rendered a judgment of a fine of $500 in each of the cases against the plaintiff Manderscheid and of $500 against each of the other plaintiffs, and ordered that each be imprisoned in the jail of Plymouth county for the period of three months; but if the fine should be paid within thirty days from the date of the order the plaintiffs should be released.

I. The first action for an injunction against Manderscheid
43 was brought in the name of Hugh Campbell. The other actions were brought in the names of other individuals. The proceedings for contempt were entitled the same as the respective actions in which the injunctions were issued.

These plaintiffs, the defendants in the proceedings for contempt, moved to strike from the files the affidavit and notice to show cause against punishment for contempt, for the reason, as alleged, that no such proceedings can be had in an equitable action as such, and can only be brought and prosecuted in the name of the State of Iowa. The court overruled the motion, and these plaintiffs insist that the court acted illegally in so doing. The court whose orders these plaintiffs were charged with having disobeyed was the court of equity, which issued the injunctions. The same court must inflict the punishment for contempt, for each court must see to it for
44 itself that its orders are not disobeyed. In Leavenworth *vs.* Tipton, 1 Black, f. 166, Blackford, J., said: 'Whether the circuit court has been treated with contempt or not is for that court alone to decide.' In our opinion it was proper to conduct the proceedings for contempt under the titles of the respective equity cases, for it was against the judicial authority exercised in those cases that the alleged acts of contempt were committed. It is true that the

proceeding is not an equity *of* proceeding, but it is in aid of the enforcement of orders made in an equity proceeding.

II. The statute requires that a rule shall be served to show cause against the punishment. The plaintiffs claim that the statute never was complied with, because what was served was a mere notice signed by the attorneys of the plaintiffs in the injunction actions.

45 It may be conceded that this was irregular, but these plaintiffs appeared and attempted to show cause and were in no way prejudiced by the irregularity.

III. It is insisted that these plaintiffs had a right to a trial by jury, because the same act, if committed, which constituted the alleged attempt constituted a crime.

But the court did not inflict punishment of the act as a crime, but merely as violative of the injunction, and these plaintiffs may still be punished for the act as a crime, and when they shall be prosecuted for that purpose they will be entitled to a jury.

IV. It is said that the court proceeded illegally in trying the cases upon *ex parte* affidavits, but it does not, we think, appear how the affidavits were taken and, besides, no objection appears to have been made to their introduction.

46 V. The plaintiffs insist that the evidence is insufficient to sustain the judgment, but upon a separate reading we have all reached a different conclusion.

Some questions presented in argument are more fully considered in Jordan *et al. vs.* The Circuit Court of Wapello County, decided at the present term.

We have examined the cases fully and do not find that the court exceeded its jurisdiction or acted illegally, and the several judgments must be affirmed."

The opinion in the case of Kinsey Jordan *vs.* The Circuit Court of Wapello County, to which reference is made in the foregoing decision, is in the words and figures following, to wit :

47 11996.

Kinsey Jordan *et al.*, Appellants,

vs.

The Circuit Court of Wapello County.

11999.

M. Oehlschlager, Appellant,

vs.

The Same.

12000.

Joseph Oehlschlager, Appellant,

vs.

The Same.

Proceedings in certiorari to test the validity of an order of fine and imprisonment made for an alleged contempt of court.

The writ was issued in each case.

E. H. Stiles and D. C. Beaman for plaintiffs; McNett & Tisdale, Sloan, Work & Brown, Roberts & Effs, and W. Sloan for defendants.

ADAMS, *Ch. J.:*

The facts in the three cases are similar in most respects, and they are submitted together.

On the 2nd day of May, 1885, writs of injunction were issued in certain actions, respectively, by the circuit cou-t of Wapello
48 county, wherein these plaintiffs were the respective defendants, and the writs were served upon them restraining them from selling liquor upon certain described premises. In November, 1885, it was shown to the court, by the affidavit of one Drake, that the defendants in the respective injunctions had sold intoxicating liquor in violation of the injunctions served upon them. Notice to show cause against punishment was served upon them, and they appeared and answered. Afterward such proceedings were had that they were adjudged to be in contempt, and were each adjudged to pay a fine of $500 and stand committed until the fine should be paid.

I. These plaintiffs, defendants in the respective injunction actions and contempt proceedings, contend that no valid writ of injunction ever issued, for the reason that no order was ever made which
49 justified the clerk in issuing the writ.

The order upon which the clerk acted appears to have been issued by the judge in vacation, and the order was not endorsed upon the petition, but was written upon a separate paper. The statute provides that if the order be made in vacation "the judge must indorse the order upon the petition." Code, sec. 3394. This not having been done, these plaintiffs contend that the order was void.

But in our opinion the provision of statute referred to is not mandatory but simply directory, and, therefore, that the order is not void notwithstanding the irregularity. In Parish *vs.* Elwell, 46 Iowa, 162, it was said: "It is a general rule of law that statutes directing the mode of procedure of public officers relating to time and manner, where there are no negative words restricting
50 the action and nothing showing a different intent, are directory," citing Dishon *vs.* Smith, 10 Iowa, 212. It appears to us that the cases at bar fall within the spirit of that decision.

II. The statute provides that unless the contempt is committed in the immediate view and presence of the court or comes officially to its knowledge an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises. Code, sec.

3495. The affidavit of one Drake was filed in these cases, but it is objected that it is insufficient, because it merely shows the facts constituting the violation of the injunctions and does not show that the affiant had personal knowledge of the facts.

In our opinion, however, the affidavit complies with the statute. It is not expressly provided that the affidavit shall show that he had personal knowledge of the facts, and the only action of the
51 court which can be based upon the affidavit is of a formal character, the evidence upon which the defendant is to be adjudged guilty, if at all, being still to be adduced.

III. The code requires that "where the action of the court is founded upon evidence given by others such evidence must be in writing and be filed and preserved." The evidence in these cases was taken in writing and filed and preserved, but it is insisted by these plaintiffs that it is insufficient for the reason, as alleged, that it was taken *ex parte*.

But, in our opinion, their position cannot be sustained. These plaintiffs were cited in those cases to appear, on the 20th day of Nov., 1885, before the circuit court of Wapello county and show cause against punishment. On that day the court proceeded to take the evidence in question in writing. Mr. E. H. Stiles, attorney for these
52 plaintiffs, was present at first, but expressly refused to remain. Afterward he addressed a note to the court to the effect that the court might consider his appearance as made for the persons charged to obviate the necessity for their actual appearance.

It is true that Mr. Stiles now shows that he supposed that his clients were about to be arrested, and that he wrote the note to prevent such result and under a mistake of fact, but we think that the court was justified in proceeding to take the evidence, and that the fact that these plaintiffs were not present, either personally or by counsel, was due to their own fault.

Another position taken by counsel, if we understand them, is that the proceedings were criminal, and that the court, for that reason if no other, could not proceed in the absence of the persons charged.

53 But while it is true that proceedings for punishment for contempt are in a certain sense of a criminal nature they are not governed by the code of criminal procedure, but by a special statute. Under that statute it appears to be sufficient to serve a rule to show cause against the punishment, as was done in this case, and the court, we think, was not bound to make an arrest before proceeding if the person charged failed to obey the rule served.

IV. It is next objected that no evidence was introduced upon the proceedings showing the order for the issuance of a writ of injunction.

It appears, however, that the writ of injunction was introduced and return of service, and we think that that was sufficient. The court would take judicial notice of its own orders in the matter out of which the alleged contempt grew.

54 V. It is insisted that the court acted illegally in refusing these plaintiffs an opportunity to make a written explana-

tion of their conduct under oath, as is provided by sec. 3496 of the code.

The fact appears to be that on the 18th day of November, 1885, they were cited to appear before the court on the 20th day of November, 1885. They did appear, and on the 21st filed their answer. Afterward the court set the case down for hearing at half past one o'clock in the afternoon of the same day.

These plaintiffs protested against setting the case at so early an hour, saying that they could not be ready so soon; but we think that all the time has been allowed which is expressly provided by statute, and if these plaintiffs needed more time they should have made a special showing for a postponement. We see no error in the action of the court in this respect.

55 VI. Section 3497 of the code provides that the evidence given by others shall be taken in writing and filed. It is insisted that while the affidavits taken in the contempt proceedings were filed the writ of injunction introduced in evidence was not filed; but that paper was evidently not contemplated by the above provision, and, besides, it was already a part of the records of the injunction action, and it was not important, we think, that it should be filed again.

VII. The statute provides a fine of $500 as punishment for contempt in disobeying an injunction like the one in question. It is insisted that the law, so far as it provides such a fine, is unconstitutional. The plaintiff's position is that the object of such a fine must be to punish not only for the contempt, but for the commission of the crime involved in the act which constituted the contempt.

56 It may be conceded that $500 is an extraordinary fine to be imposed for a contempt of court, but we cannot say that the Legislature was not justified in supposing that a fine of that magnitude was necessary to secure obedience to the orders of the courts. It may have taken notice that the business in which the acts of contempt are committed is often lucrative, and that offenders, aided by ingenious course in securing delays, can afford to pay small fines if they can thereby continue their business. It will not be denied that the persistence in disobeying the orders of the courts made for the purpose of abating the nuisances of the liquor traffic is unprecedented. The learned counsel for the plaintiffs call attention, indeed, in their argument to the wide-spread hostility to the statute.

57 They assume that this hostility is a matter of general information, as it is. Being such, we may assume that it was not unknown to the Legislature, and that the Legislature was properly influenced by the fact in providing so large a fine. Obedience to the orders of the courts must be secured, and we are not prepared to say that if the fine provided shall prove to be insufficient some future Legislature would not be justified in providing a larger one.

VIII. It is said that the house journal fails to show that the statute under which the injunction actions were brought passed the house.

It is not denied that the enrolled bill, duly signed and filed in the

office of the secretary of state, is at least presumptive evidence of its due enactment, and that the courts take judicial notice of what appears from such record to be the law. Now, if such record can
58 be impeached at all, it appears to us that it must be done by evidence. Whether there was any such evidence introduced in the injunction cases we do not know, nor is it material. An error, if any, made upon the evidence in those case- would not justify the plaintiffs in disobeying the injunctions.

IX. The court below ordered that these plaintiffs be imprisoned until the fine should be paid. The court should have provided, in addition, the imprisonment should not exceed one hundred and fifty days. Code, sec. 4509; State *vs.* Myers, 44 Iowa, 584. It is not necessary, however, to reverse upon this ground, but an entry may be made correcting the judgment as above pointed out. State *vs.* Myers, above cited.

X. The plaintiff, M. Ochschlager, claims that he was never
59 duly served with notice of the action for an injunction. The service of notice appears to have been made by leaving a copy, at his usual place of residence, with his son, a member of his family over fourteen years of age, and that this plaintiff was not found within the county. Such service is in accordance with the statute.

XI. It is claimed by M. Ochlschlager that the writ of injunction was never served on him; but the sheriff's return shows that it was, and the court was justified in so finding.

XII. Joseph Ochlschlager claims that the proceedings for contempt were void as against him because the proceedings were had at the court-house, whereas! for three weeks immediately preceding that time the court had been held elsewhere, to wit, at a place called Liberal Hall.

We think that this plaintiff by a reasonable effort could
60 have found the court, and was bound to take notice of its place of sitting.

The judgments will be corrected in respect to the term of imprisonment, as above pointed out, and in all other respects affirmed.

And afterwards, to wit, on the 3d day of Sept., 1886, there was filed in the office of the clerk of said court petition for writ of error, writ of error bond, writ and citation, the originals of which are hereto attached and made part of this return, and true copies thereof remain on file in the office of said clerk.

61 Filed Sep. 3, 1886. G. B. Pray, clerk sup. court.

EUGENE EILENBECKER, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now Eugine Eilenbecker, a citizen of Plymouth county

and State of Iowa, by Argo & Kelly & Fred. O'Donnell, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between Eugene Eilenbecker, plaintiff, and the District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months unless said fine be paid within thirty days after the rendition of said judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, wherein one L. M. Garner was plaintiff and your petitioner was defendant, in which case your petitioner obtained a writ of certiorari from the supreme court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court in which said decision affirming the decision of said district court was rendered is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six (6) of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage of the said Eugine Eilenbecker, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY & FRED. O'DONNELL,
Attorneys for Petitioner.

62 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judge of the supreme court of the State of Iowa:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court, before you, being the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between Eugene Eilenbecker, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said Eugene Eilenbecker, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witnesseth the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. Court, Northern Dist. Iowa,
By J. H. BOLTON, *D'p'ty.*

Allowed.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

Filed Sep. 3, 1886.

G. B. PRAY,
Clerk Sup. Court.

63 UNITED STATES OF AMERICA, *ss:*

To L. M. Garner and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, and the District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on

the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein Eugene Eilenbecker is plaintiff and The District Court of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, } ss:
Plymouth County, }

We hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy thereof.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for Defendant in Error.

Filed Sep. 3. 1886.

G. B. PRAY,
Clerk Sup. Court.

64 We, the undersigned, Eugene Eilenbecker, principal, and N. B. Kaiser & Henry Manderschied & John Manderschied, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon the conditions as follows:

Whereas the said Eugene Eilenbecker has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa to the Supreme Court of the United States of America, rendered on the 19th day of June, 1886, in a proceeding where the said Eugene Eilenbecker was plaintiff and The District Court of Plymouth County, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said Eugene Eilenbecker sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed:

Now, if the said Eugene Eilenbecker will prosecute his appeal and writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of the said Supreme Court (upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court) and

pay and perform the judgment of the supreme court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

EUGENE EILENBECKER, *Principal.*
N. B. KAISER.
his
HENRY x MANDERSCHIED, SR.,
mark.
JOHN MANDERSCHEID, *Sureties.*

STATE OF IOWA, *Plymouth County,* } *ss:*

N. B. Kaiser & Henry Manderscheid & John Manderscheid, each being duly sworn, on oath depose and say, and each for himself says, that he — a freeholder of the State of Iowa and has property in the State worth two thousand dollars and property liable to execution in this State equal to the sum of one thousand dollars over and above all my debts & liabilities an- incumbrances thereon.

N. B. KAISER.
his
HENRY x MANDERSCHEID, SR.
mark.
JOHN MANDERSCHEID.

Notarial Seal Charles F. Schmidt, attorney-at-law.

Subscribed and sworn to before me and in my presence by the said N. B. Kaiser, Henry Manderscheid, & John Manderscheid this 30th day of June, 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice Supreme Court.

STATE OF IOWA, *Plymouth County,* } *ss:*

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the sureties on the annexed bond, N. B. Kaiser, Henry Manderscheid, Sr., and John Manderscheid, are amply good and sufficient for the penalty named therein, and I would approve said bond if the same was presented to me for approval.

Seal of the District Court, Iowa, Plymouth Co.

Witness my hand and seal of said district court, affixed this 1st day of July, A. D. 1886.

W. S. WELLIVER, *Clerk.*

64½ [Endorsed:] Eugene Eilenbecker, plaintiff in error, *vs.* The District Court of Plymouth County, Iowa, defendant in ror.

[Stamped:] Filed Sep. 3, 1886. G. B. Pray, clerk sup. court.

65 STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a full, true, and correct transcript of the record, final judgment, and decision of a certain cause lately decided in said supreme court, wherein Eugene Eilenbecker was plaintiff and The District Court of Plymouth County, Iowa, defendant, and that said final judgment and decision relates also to five other like cases which are referred to in a stipulation transmitted herewith to be filed in the Sup. Court of the U. S.

And I further certify that I have retained in my office true copies of petition, bond, citation, and writ of error in said cause, the originals of which are attached hereto and made a part of this
66 return, and this transcript of record, final judgment, and decision, etc., is [are] returned in obedience to said writ.

Seal of the Supreme Court of Iowa.

In testimony whereof witness my signature and the seal of said court, at Des Moines, Iowa, this 6th day of Sept., 1886.

G. B. PRAY,
Clerk Supreme Court of Iowa.

67 EUGENE EILENBECKER, Pl'ff in Error,
vs.
DISTRICT COURT OF PLYMOUTH CO., IOWA, C. H. Lewis, Judge, Def'ts in Error, and Other Like Cases. } Error to Supreme Court of Iowa.

(This transcript is sent as an additional return to the writ in case of Eugene Eilenbecker, pl'ff in error, and to make the return complete in that and other like cases which counsel propose to submit together.)

68 Be it remembered that on the 14th day of April, 1886, there was filed in the office of the clerk of the supreme court of Iowa a printed abstract in a cause wherein John Manderscheid was pl'ff and C. H. Lewis, judge, etc., def't, certiorari; which abstract is in the words and figures following, to wit:

69 *Abstract of Record.*

In the Supreme Court of the State of Iowa. Council Bluffs Term, March, 1886.

JOHN MANDERSCHEID
vs.
THE DISTRICT COURT OF THE STATE OF IOWA IN and for Plymouth County, C. H. Lewis, as Judge of said District Court, and W. S. Welliver, Clerk of said Court. } Petition for Writ for Certiorari.

Argo & Kelly, att'ys for pl'ff.

To the supreme court of the State of Iowa:

Your petitioner, John Manderscheid, respectfully represents to

this honorable court that he is a citizen of the United States and of the State of Iowa and resident of the county of Plymouth and State of Iowa.

70 That on or about the 30th day of October, 1884, there was filed in the office of the clerk of the district court in and for Plymouth county and State of Iowa a petition in chancery, wherein one Hugh Campbell was plaintiff and your petitioner and Mrs. John Manderscheid were defendants, in which petition, among other things, there was in substance alleged that your petitioner was keeping and maintaining a nuisance in the city of Le Mars, in the county aforesaid, such as is prohibited by chapter six, title eleven, and as amended by chapter 143, Laws of the 20th General Assembly of the *Statutes* of Iowa, commonly known as the prohibition statute; and in said petition was a prayer for a writ of injunction, as is provided for in said statute; and afterwards one Joel Gardner commenced a second action against your petitioner in substance and in form the same as the one above referred to.

That on or about the 30th day of March, 1885, temporary writs of injunction were issued in said action, and thereafter the same were served on your petitioner; that thereafter your petitioner answered in said cases, and the issues therein were joined and the said causes were regularly on the calendar of said court for trial at the October, 1885, term thereof, at which time the following proceedings were had: The said plaintiff in said case, Hugh Campbell, filed charges therein by affidavits in said case and in said court, alleging that your petitioner had violated said writ of injunction; also filed notice to show cause, &c. Whereupon your petitioner filed a motion to strike the notice served upon him by said plaintiff to show cause why he should not be fined for contempt from the files, which motion was overruled by the court, and to which ruling defendants duly excepted. Whereupon and at the same term of court your petitioner filed his demurrer to said proceeding, a certified copy of which is hereto attached and made a part hereof, which demurrer was

71 by the court overruled, to which your petitioner duly excepted; and afterwards and at the same term of court said plaintiff proceeded to read in evidence the affidavits filed by plaintiff as aforesaid, after which it was ordered by the court, against the objections of your petitioner, that further testimony may be taken in said cause on the part of the plaintiff, by oral testimony, in said case from witnesses produced by plaintiff, and their testimony to be taken down in writing by the short-hand reporter of said court; to all of which your petitioner duly excepted. At the conclusion of the taking of said testimony the further hearing and trial of the same was adjourned until the March, 1866, term thereof, at which term of said court, without first having served your petitioner with a rule for that purpose, your petitioner was compelled by said court to answer unto the charge made against him for the violation of said writ of injunction, and under the order of said court, with your petitioner's exceptance thereto, he did answer thereto by affidavits fully and completely, as he alleges, and should have been exonerated from said charge; but, to the contrary thereof, the judge of said

court in each of said actions entered upon his docket a memoranda entry, which is hereinafter set out, and thereupon the clerk of said court entered a record entry, both records of said court, as hereinafter set out, which was not at all in conformity with the memoranda entry of said judge upon his docket, and the same was entered of record in said court by the clerk thereof, whereby your petitioner was fined as for contempt in the sum of five hundred dollars and ordered committed to prison for the term of three months in each of said proceedings, without any other or further trial or proceedings being had by said court than as aforesaid.

And thereafter—that, is after said clerk had so spread such records upon the records of said court, which was not done by said clerk until after the adjournment of said court—and before such record entry had been submitted to the judge of said court for his
72 approval and approved by him, the said clerk has assumed to and has issued a warrant for the arrest of your petitioner and delivered the same to the sheriff of Plymouth county, and your petitioner is about to be arrested and restrained of his liberty and thrust into prison thereby and thereunder, and your petition- alleges that such will be done unto him, as he verily believes, if a stay of proceedings herein be not allowed.

A complete record of all of which pleadings, processes, affidavits, orders, doings, and proceedings for greater certainty are hereto attached and made a part of this petition. Your petitioner claims and charges the facts and the law to be in connection with said proceedings and records that said court exceeded its jurisdiction and acted illegally and erroneously and is continuing to do so, in this—

1st. That said court exceeded its jurisdiction and had no power or authority to require your petitioner to make answer unto such charge of violating said writ of injunction at the time, place, and manner in which said court required it to be done.

2d. That your petitioner fully and completely answered unto the alleged charge of violating said writ of injunction and fully and completely established by preponderance of evidence that he had never violated said writ and should have been discharged, and that no reasonable grounds for charging him for a violation of said writs or either of them existed.

3d. That if it is honestly and fairly insisted by the said district court or the judge thereof that your petitioner did not satisfactorily answer unto such charge of violation of said writs that then said court and said judge had no power or authority to fine your petitioner as for contempt in a sum greater than fifty dollars and imprison him for a longer period than thirty days, and that by
73 the rendering of the decision and the order which said court did render and which said judge made and which was so entered by the clerk of said court the said court far exceeded its authority, power, and jurisdiction, and acted illegally, oppressively, and without the authority of law.

4th. In entering the record so entered by the clerk thereafter, as by this petition shown, and issuing process thereunder, such record being a nullity, of no force or effect.

5th. In taking action as to such alleged or pretended contempt without any proper showing having first been made as to such contempt.

6th. In receiving as evidence that which was not evidence in the pretended trial of said matter.

7th. In refusing to try said matter in some manner or form provided for the trial of matters to be tried in a court of record.

8th. In punishing as for contempt without entering of record, as required by statute, the evidence upon which the court assumed and pretended to act.

9th. In punishing the petitioner without trial by jury and without due process of law and in violation of constitutional guarantees.

10th. In punishing with excessive fine and imprisonment in violation of the constitutional guarantee provided in § 17 and § 11 of art. 1 of the constitution of Iowa.

11th. In punishing under a pretended act of the Legislature of the State of Iowa which was never passed by said Legislature as required by the constitution.

12th. In violating and abridging your petitioner's constitutional guarantees as provided in § 14 of art. 14 of the Constitution of the United States.

Wherefore your petitioner prays *for*, as he has no other
74 remedy or redress, that a writ of certiorari do issue from this honorable court, directed to the said the district court of the State of Iowa of the 4th judicial district in and for Plymouth county, and to C. H. Lewis, judge of said court, and to W. S. Welliver, clerk of said court, and commanding said court and said judge and said clerk to certify fully and completely to this honorable court forthwith, or as speedily as may be practicable, or at a time and place specified by this honorable court, a full, complete, true, and correct transcript of the records and proceedings to this court, as well as all the facts in the case describing or referring to them or any of them, with convenient certainty, and to have then and there the writ of certiorari which this honorable court may issue, and that your petitioner may have a proper bond fixed that he may have a stay of all proceedings in said matter until the determination of this case, and your petitioner have such other relief as may be proper in these proceedings, and have his costs.

ARGO & KELLY AND
O. C. TREADWAY,
Att'ys for Your Petitioner.

Duly verified.

"EXHIBIT A."

In the District Court of the State of Iowa in and for Plymouth County. October Term, 1884. Petition in Equity.

JOHN CAMPBELL, Pl'ff,
vs.
JOHN MANDERSCHEID and Mrs. JOHN MANDERSCHEID and NIC KEUCH, Def'ts.

The plaintiff, for cause of action against defendant, alleges—

Par. 1. That plaintiff is a resident of Plymouth county, Iowa.

Par. 2. That defendants are the owners of the following-
75 described lot, together with the building situated thereon, to wit, lot nine in block five, in Le Mars, Iowa.

Par. 3. That the defendant, John Manderscheid, for months past has been and now is engaged in selling intoxicating liquors, to wit, ale, wine, beer, gin, brandy, whisky, and other intoxicating liquors, in said building contrary to law, to wit, chapter six, title eleven, Code of Iowa, and as amended by chapter 143, Laws of the 20th General Assembly of Iowa, thereby and by so doing constituting a public nuisance.

Par. 4. That within said building are contained certain articles of furniture, to wit, counters, cases, shelving, chests, bottles, kegs, and other articles of furnishing used in selling and disposing of said liquors.

Par. 5. Whereof- plaintiff prays, first, that a temporary injunction be issued restraining said defendant from further violating said law; second, that upon final hearing said temporary injunction be made perpetual; third, that by decree of the court the said nuisance be perpetually enjoined and abated and defendant, together with all employés, agents, or servants, be restrained and enjoined from hereafter selling or in any manner disposing of intoxicating liquors on said premises or elsewhere in said county; fourth, for costs and such other — further relief as to the court may seem just and equitable.

CURTIS, DURLEY & HART,
STRUBLE, RISHEL & SARTORI,
Att'ys for Pl'ff.

Duly verified.

Answer.

Come now the defendants in the above-entitled cause and, answering plaintiff's petition filed here, state—

Paragraph 1st. That the defendants deny each and every
76 allegation in the petition not herein admitted or otherwise answered.

Par. 2d. Admit that paragraphs one and two of the petition are true.

Par. 3. Deny that at any time since the 3d day of July, 1884, defendants or either of them have been engaged in retailing any kind of liquors at any place in Plymouth county, Iowa.

Par. 4th. That defendant, John Manderscheid, has a legal permit and lawful authority granted him by the board of supervisors of Plymouth county, Iowa, to sell intoxicating liquors for all lawful purposes.

Par. 5th. Wherefore defendants demand that plaintiff's bill be dimissed, and that they have judgment against plaintiff for cost.

ARGO, KELLY & AUGIR,
Att'ys for Defendants.

Duly verified.

Filed in my office Nov. 15th, 1884.
W. S. WELLIVER, *Clerk D. C.*

And now comes the plaintiff, and by leave of the court, files this amendment to his petition, and alleges that since the original petition was filed herein one Nic Keirsh or Keirch has become in some way interested in the saloon business now and heretofore carried on in the premises described in the petition, either as part owner or as employé of the defendant Manderscheid, and is now engaged in selling intoxicating liquors—many kinds—in said building, the names of the various kinds of liquors being to the plaintiff unknown, and is thereby violating the statute of Iowa, to wit, chapter six, title eleven, Code of Iowa, thereby and by so doing constituting and maintaining a public nuisance.

77 Wherefore plaintiff prays that said Nic. Keirsh be made a defendant in this cause; that a temporary injunction be issued against him, as well as the other defendants, and that he be made subject to the full prayer of said original petition.

CURTIS, DURLEY & HART,
STRUBLE, RISHEL & SARTORI,
Att'ys for Pl'ff.

Duly verified.
W. S. WELLIVER, *Clerk.*

Filed March 26th, 1885.

It was agreed and consented in open court that defendants' answer shall apply to and be considered as an answer to both the original and amendment to the petition.

Notice.

To said defendants:

You are hereby notified that on March 28th, 1885, the plaintiff in this cause will move the court for the issuance of a writ of injunction as prayed for in the petition, and that Nick Kirsh has been made a party defendant to the above suit.

STRUBLE, RISHEL & SARTORI,
Att'ys for Pl'ff.

Motion for Temporary Injunction.

The plaintiff in the above cause moves the court for the issuance of a temporary injunction in this cause, notwithstanding the order of the court heretofore made in denying such writ, upon the grounds that since said date the supreme court of Iowa has rendered a decision in the case of Littleton *vs.* Fritz (a copy of which is now on file with the clerk of this court) in which it is held that under the present statutes of Iowa such writs are authorized.

STRUBLE, RISHEL & SARTORI,
CURTIS, DURLEY & HART,
Att'ys for Pl'ff.

78 Filed in my office March 26th, 1885.
W. S. WELLIVER, *Clerk.*

And now, to wit, on this 28th day of March, A. D. 1885, it being the 12th day of the regular March term of said court, this cause coming on for hearing upon the motion of the plaintiff for a temporary injunction, the plaintiff appearing by his attorneys, Curtis, Durley & Hart and Struble, Rishel & Sartori, and the defendants Manderscheid by their attorneys, Argo, Kelly & Augir; and the court, after considering the pleadings and the evidence adduced in the cause, finds that the plaintiff is entitled to a temporary injunction as prayed in the petition. Whereupon it is ordered that upon the filing and approval by the clerk of this court of a good and sufficient bond in the sum of one hundred dollars a temporary injunction issue enjoining and restraining the defendants and each of them from selling or in any manner disposing of any kind of intoxicating liquors, to wit, ale, wine, beer, gin, brandy, whisky, or any other intoxicating liquors, in or upon the following-described premises or elsewhere in said county, to wit, lot 9, in block 5, in Le Mars, Iowa.

Writ of Injunction.

The State of Iowa to John Manderscheid, Mrs. John Manderscheid, and Nic. Kirsh:

Whereas Hugh Campbell, as plaintiff, has heretofore filed in the office of the clerk of the district court of the State of Iowa in and for Plymouth county a petition duly sworn to, making John Manderscheid, Mrs. John Manderscheid, and Nic. Kirsch defendants therein and praying that they be restrained from selling or
79 disposing of any intoxicating liquors, to wit, ale, beer, gin, brandy, whisky, or any other intoxicating liquors, in or upon the premises situated as follows: Lot 9, in block 5, in Le Mars, Iowa, or elsewhere in said county, and that you, said John and Mrs. John Manderscheid, be restrained from using or permitting to be used said building for such purpose or any part of said premises; and whereas the district court of Plymouth county, Iowa, has made an order allowing said writ of injunction to issue upon the filing of *of* a bond with sureties pursuant to said order; and whereas said order has been complied with and such bond filed and sureties approved:

Now, therefore, you, the said John Manderscheid and Mrs. John Manderscheid and Nic. Kirsh, defendants as aforesaid, are hereby strictly enjoined and restrained from selling or in any manner disposing of any intoxicating liquors, to wit, ale, wine, beer, gin, brandy, whiskey, or any other kind of intoxicating liquors, upon said premises, to wit, lot 9, in block 5, in Le Mars, Iowa, or elsewhere in said county, and you, said John and Mrs. John Manderscheid, are hereby strictly enjoined and restrained from using or permitting to be used, for the purpose of selling intoxicating liquors, the said building situated on said above-described lot or any part of said premises until the further order of our district court in the premises; and this injunction you must strictly observe under the penalties of the law.

Witness my hand and seal of said district court, hereto affixed, at Le Mars, Iowa, on this 30th day of March, 1885.

W. S. WELLIVER,
Clerk District Court.

Served March 30th, 1885.
Filed in clerk's office June 18, 1885.

80 And now, at this time, to wit, Oct. 16th, A. D. 1885, plaintiff files affidavit charging contempt and violation of injunction and asks rule on def't, John Manderscheid; rule granted, returnable Monday at 9 a. m. And afterwards, on the 19th day of October, A. D. 1885, plaintiff files notice of rule served and defendant files motion to strike affidavit from files. Motion overruled and defendant excepts. And afterwards, on the 19th day of October, 1885, defendant files demurrer; demurrer overruled and defendant excepts; evidence taken in contempt case on part of plaintiff or complainant. And afterwards, on the 23d day of October, 1885, pl'ff files proof by way of affidavits, and defendants allowed until Saturday, 2 p. m., to file counter-affidavits; by consent defendant Manderscheid to file written explanation in 17 days, and to be submitted thereafter, in vacation, within five days, and determined in vacation as of this term.

Demurrer.

Demurrer to application of pl'ff for order to show cause.

Come now defendants in the above-entitled cause and demur to the information of the violation of the injunction issued herein for the reasons:

1st. That *as* sufficient showing is made in the application of plaintiff for the order to show cause that any injunction has ever issued or been served upon the defendant herein and no authenticated copy of said injunction and service thereof is attached to said application, as required by section 3403 of the code.

2d. That the affidavit of plaintiff's attorney, filed herein to show a violation of said injunction, does not show that said affiant possesses any knowledge of said violation of said writ.

3d. That chapter 143 of the Acts of the 20th Gen'l Assembly of Iowa, and especially section 12 of said act, is null and void because in conflict with sections nine, ten, and eleven of article one
81 of the constitution of Iowa, and therefore this court has no power to punish defendants for a violation of said injunction; is null and void because the same is in conflict with the 14th amendment to the Constitution of the United States and with the act of Congress of the United States known as the "civil rights bill."

ARGO, KELLY & AUGIR,
Atty's for Defendants.

Affidavit of Violation of Injunction.

I, I. S. Struble, being duly sworn, do depose and say that I am one of the attorneys for plaintiff in the above-entitled cause and have been since the commencement of said cause; that on the 30th day of March, 1885, a writ of injunction was issued out of the office of the clerk of the district court in and for said county enjoining and restraining the defendants, John Manderscheid and Nic Kirsch from selling or in any manner disposing of any kind of intoxicating liquors upon the following-described premises, situated in Plymouth county, Iowa, viz., lot 9, in block 5, in Le Mars; that on said March 30th, 1885, said writ of injunction was duly served upon said defendants, John Manderscheid and — Kirsch, by G. Haerling, sheriff of Plymouth county, Iowa; that affiant is informed and believes the said John Manderscheid is now, or for some months past has been, engaged in selling intoxicating liquors upon said premises in violation of said writ of injunction and of the statutes of Iowa.

Wherefore affiant, on behalf of the plaintiff and others, asks for a rule upon said John Manderscheid to show cause why he should not be punished for contempt of court.

I. S. STRUBLE.

Sworn to before me and subscribed in my presence by said I. S. Struble this 15th day of October, 1885.

CHAS. H. HART,
Notary Public.

Filed in my office Oct. 16th, 1885.
82 W. S. WELLIVER, *Clerk.*

In the District Court of Plymouth County, Iowa. October, 1884, Term.

Hugh Campbell
vs.
John Manderscheid *et al.*

And now, at this time, to wit, October 20th, 1884, defendants are given 30 days to file answer; and afterwards, to wit, November 14th, 1884, defendants file answer.

In the District Court of Plymouth County, Iowa. March Term, 1885.

Hugh Campbell
vs.
John Manderscheid *et al.*

And now, at this time, to wit, March 26th, 1885, plaintiff files motion for temporary injunction. Hearing set for Saturday, 9 a. m.

Motion.

Comes now the defendants and move the court to strike from the files the affidavit and application for order to show cause why defendant should not be punished for contempt, for this reason, that no such proceedings can be had on equitable action as such, but can only be brought and prosecuted in the name of the State of Iowa.

ARGO, KELLY & AUGIR,
Att'ys for Def't.

Filed in my office Oct. 19, 1885.
W. S. WELLIVER, *Clerk.*

Demurrer to Application to Plaintifff or Order to Show Cause.

83 Come now the defendants in the above-entitled cause and demur to the information of the violation of the injunction issued herein for the reasons—

1st. That no sufficient reason is made in the application of plaintiff for the order to show cause that any injunction has ever been issued or served upon the defendants herein, and no authenticated copy of said injunction and service thereof is attached to said application, as required by § 3403 of the code.

2d. That the affidavit of plaintiff's attorney filed herein to show a violation of said injunction does not show that said affiant possesses any knowledge of any violation of said writ.

3d. That chapter 143 of the Acts of the 20th General Assembly of Iowa, and especially section 12 of said act, is null and void, because in conflict with sections nine, ten, and eleven of article one of the constitution of Iowa, and therefore this court has no power to punish defendants for a violation of said injunction.

3d. That said act of the General Assembly of Iowa authorizing this court to punish defendants for a violation of said injunction is null and void because the same is in conflict with the 14th amendment to the Constitution of the United States and with the act of Congress of the United States known as the "civil rights bill."

ARGO, KELLY & AUGIR,
Att'ys for Def't.

Filed in my office October 19th, 1885.
W. S. WELLIVER, *Clerk.*

Notice.

To John Manderscheid, defendant:

You are hereby notified that by a rule of the district court of Plymouth county, Iowa, made at the present term of said
84 court, you are ordered to show cause, on Monday, October 19th, 1885, at 9 o'clock a. m., why you should not be punished for violating the writ of injunction issued in this cause and served upon you.

STRUBLE, RISHEL & SARTORI,
Att'ys for Pl'ff.

Served Oct. 16th, 1885.

Oral Evidence.

Defendant at this time objects to any proceedings had in this cause, for the reason that defendants are not ready to proceed; also objects to calling any witnesses and the taking of their oral testimony, because that mode of taking the evidence is incompetent and not provided by statute; overruled; defendants excepted.

CLARENCE HINKLEY, called for plaintiff and being sworn, testifies as follows:

I am not personally acquainted with John Manderscheid; I know him by sight; am acquainted with his place of business on Main street. I have obtained intoxicating liquors there since March 30th, 1885; don't know the exact time. I go there quite often. Last time I was there was fore part of this month. At that time got beer; were a few other persons there. He sold the beer to me himself. I don't think I paid for it. I have obtained liquor from him occasionally for a number of years. I couldn't say I received liquor from him in that place since March last. The last time I got beer was the fore part of October. Mr. Wood and Mr. Ruth was with me; also Mr. McClaren. There is a bar in this place and glasses; couldn't say as to whether there were bottles or not.

Cross-examination.

I am the same witness who appeared in the Neth case, and was in there on the same occasion I was in Neth's place; went
85 into Manderscheid's after I was in at Neth's. It was the same day. Ruth and Wood went with me into both places; don't know how many drinks I got that day; by the number, however, don't think I was intoxicated. I came in town that day, in the afternoon, and went out in the evening; don't know how many saloons I visited that afternoon; didn't go around to quite all the saloons in town; don't know whether I drank more than once in each saloon; might have drank more than once at some of them; drank a great many times that afternoon, during the time I was in town, and was not drunk; don't know whether the liquor was intoxicating; told several that we had been around saloons and drank.

JOHN N. HOFFMAN, called for plaintiff, *and* testified as follows:

I have lived in Lemars for three years. I do draying; have done draying for John Manderscheid; have hauled ordinary beer kegs full of something during the summer; have hauled some since May 30th, 1885, from the cars to his brick warehouse; don't know what was in the kegs or barrels that I hauled into the warehouse; have hauled barrels which are commonly used for whiskey to the warehouse from the depot; did't read any of the lettering on the barrels. The barrels were, some of them, colored and some natural wood color. They were placed in his ice-house, on the back part of the lot occupied by the saloon. I did this hauling for Manderscheid, and he paid me for it. I hauled some kegs from this warehouse to other saloons; have been in the saloon which was owned by John Manderscheid before he was enjoined—quite a number of times since it was opened up afterwards; have sometimes seen him in the room; got something to drink in the saloon; don't know what it was. I drank lager beer in the old country; never got any beer in that saloon when Manderscheid was present; didn't get any intoxicating liquors there; have never seen Manderscheid in
86 said saloon since 30th of March, behind the bar or waiting on customers; don't know whether the barrels and kegs which I hauled from the cars and placed in Manderscheid's ice-house contained any beer or what they contained. I never drank any beer or whiskey in that saloon since March 30th, 1885, sold or given me by Manderscheid.

GEORGE HODAM, called by plaintiff, testified as follows:

I live in Le Mars; lived here for ten years. I am acquainted with Manderscheid, and know the saloon formerly occupied by him on Main street, next to Kaiser's boot and shoe store; have been in there since March, 1885, but don't know whether Manderscheid opened it up since then or not; was last in there two or three weeks ago; think I have been in there about twice since 1885, and think I saw Manderscheid on one of these occasions. He was standing around in the saloon. I had a drink there once since March. At the time I got this drink Manderscheid was standing in the room talking to some parties. He had some papers in his hand and a pencil; didn't stay there more than two or three minutes; think this was in the latter part of September. There were other men in the saloon, but I didn't pay any attention as whether they drank or not. The person who waited on me on that occasion and who was the bartender—I don't know his name; did not see Mr. Manderscheid's son Johnny there either of these times.

Cross-examination.

The time that I drank in there I did not get anything to drink from Mr. Manderscheid. He did not wait on me. He and some other people were there in the room, but was not doing anything about the bar. Neither Manderscheid or any other person made any objections to me drinking in there; have never seen a billiard

table in that place. The place at which I drank is called a
87 bar; saw the same thing there when it was a boarding-house; don't know what you would call it.

MALCOLM WOOD, called by plaintiff, testified as follows:

Am acquainted with John Manderscheid. During the last few months have been in the saloon next to Kaiser's boot and shoe store, on Main street, and have procured there from Manderscheid intoxicating liquors, and drank. I was there last some time the fore part of this month. I got beer. He sold it to me in person; was in there prior to that time some time in July; bought beer from Manderscheid that time. These are the only times I got intoxicating liquors there during the last few months; haven't got any intoxicating liquors from Manderscheid since March except those two times. Other men were drinking at the bar this time I was speaking of in July; and at this time later I speak of he handed out liquors to other persons.

Cross-examination.

I am not sure whether I went in with Hinkley or met him after I went in there; have known Manderscheid for seven or eight years. I am sure he was in there as I have stated. I got beer twice of Manderscheid since March. I think I drank one glass of beer each time, but I wouldn't be positive; don't know that we boys were going around from saloon to saloon on a tour of inspection. We were in several saloons that day. In some saloons we drank more than one glass; in others we didn't; can't give the day of the month we were in Manderscheid's. The other time we were in there was on the 9th day of July; don't know what day of the week it was; it wasn't on Sunday.

I, I. S. Struble, being duly sworn, depose and say that I am a resident of said county and State and have been for 13 years; that I know the saloon referred to by A. P. McLaren and others
88 whose affidavits will be filed in this case, and that the same is on lot 9, block 5, in Lemars, Ia.

I. S. STRUBLE.

In the District Court of Iowa in and for Plymouth County. Nos. 75, 77, 84, 88, 108, 111, 115. Equity.

Submitted March 3d, 1886.

Before Hon. C. H. Lewis, judge; W. E. Cody, reporter.

Appearances: For pl'ffs, Struble, Rishel & Sartori; for defendants, Argo, Kelly & Augir and O. C. Treadway.

Defendants object to this proceeding and trial because the court has no jurisdiction to try the defendants without a jury. Defendants

have not been indicted, and we ask that this objection apply to and be considered made to all the cases.

No. 75. Equity.

Hugh Campbell, Pl'ff,

—

John Manderscheid, Def't.

At this time the pl'ff offers in evidence writ of injunction herein with return of the officer thereon.

Marked "Exhibit A."

Objected to by the def'ts for reason that there is no case pending before this court upon which this testimony is admissible, there being no cause now on trial; and the same is incompetent, immaterial, and irrelevant.

Overruled; def'ts except.

Def'ts offer to file affidavits.

Objected to by the pl'ff for the reason that the def'ts were to show cause on the first day of the term.

By the COURT: Under the circumstances we will allow them
89 to be filed.

Def'ts offer in evidence the affidavits of John Manderscheid, J. P. Kieffer, John Engalls, M. Stone, Carl Furchner, Albert Metzmeyer, J. C. Morris, M. Daly, Arthur Hebb, Nick Heltzner, W. H. Redwig, W. H. Philleo, James Mohan, P. K. Edwards, J. C. Hayward.

No. 77.

Wesley Hitt, Pl'ff,

vs.

Matt Kale *et al.*, Def'ts.

The pl'ff offers in evidence the writ of injunction issued herein, marked Exhibit "A."

Also the return of the officer thereon.

Same objection as stated in the case last above.

Same ruling; def'ts except.

Mr. TREDWAY: I must confess that I do not understand this proceeding. We started in to try the Neth case, and that was continued for the present, and also the Manderscheid, and before any trial is had on that we find ourselves in 3 or 4 other cases.

No. 2.
No. 84.

G. N. Thompson, Pl'ff,

vs.

Henry Brauch *et al.*, Def'ts.

The pl'ff offers in evidence writ of injunction heretofore issued in this case; also the return of the officer.

Marked Exhibit "A."

The def'ts make the same objection as in No. 75.
Same ruling; def'ts except.

The def'ts file the affidavits of the def'ts Brauch and Peter
90 Retchferger; also of J. C. Clos, John Ketes, Frank Miller, and Fred. Becker.

No. 87.

D. C. Reynolds, Pl'ff,
vs.
John B. Greenen, Def't.

Pl'ff offers in evidence the writ of injunction heretofore issued herein with the return of the officer.

Same objection as in number 75; same ruling; def't excepts.
Marked Exhibit "A."

The def't files affidavits of John B. Greenen and Elizabeth Greenen.

No. 88.

L. M. Garner, Pl'ff,
vs.
John P. Medinger *et al.*, Def'ts.

Pl'ff offers in evidence the writ of injunction heretofore issued herein with the return of the officer thereon.

Def'ts object; same objection as in No. 75; same ruling; def'ts except.

The def'ts file the affidavits of Eugene Eilenbecker, Arthur Hebb, John Engalls, Carl Furchner, John C. Morris, Albert Metzmeyer, P. K. Edwards, and J. C. Hayward.

No. 108.

Joel Gardner, Pl'ff,
vs.
Nic Jakop *et al.*, Def'ts.

Pl'ff files notice of rule as to Nic Jacob and John Manderscheid.

Objected to by def'ts as incompetent, immaterial, and
91 irrelevant, not being a proper paper known or required in the trial of this case.

No. 3.

In any form or phase of it.

Objection overruled; def'ts except.

The def't files the affidavits of Nic Jacobs, Nic Schaul, Peter Smith, Nic Heltzner, and J. C. Hayward.

No. 11.

Wm. H. Briggs, Pl'ff,
vs.
John Peyson *et al.*, Def'ts.

Pl'ff files notice of rule and service thereon. Defendant — same objection as in last case above noted; same ruling; def'ts except.

The pl'ff also offers in evidence the writ of injunction heretofore issued herein with the return of the officer thereon.

Same objection as in No. 75.
Same ruling as last above; def'ts except.

Def't files affidavits of John M. Peyson, Henry Nye, Katie Peyson, Geo. Verhule, and A. Tyxka.

No. 115.

G. J. Gray, Pl'ff,
vs.
Theodore Elskamp, Def't.

Pl'ff offers in evidence notice to appear and show cause.

Same objection as in the case last above; same ruling; def't excepts.

Also offers in evidence the injunction heretofore issued herein with the return of the officer thereon, marked Exhibit "A."

92 COUNSEL FOR DEF'T: In this case it was agreed that it should be continued, and we did not prepare any affidavits. Def't now asks time until the next term to prepare affidavits, as per agreement.

In No. 75, Campbell *vs.* Manderscheid, the def't moves to strike out all the evidence and affidavits introduced on the part of pl'ff, for the reason that the same is incompetent, immaterial, and especially for the reason that the def't has never been served with any rule to appear and show cause, as required by law.

COUNSEL FOR PL'FF: We desire to show that this man was served with notice prior to the October term of this court and this case was entered upon under that notice.

Mr. TREDWAY: I ask now, in behalf of the def't, that this case be dismissed and an order entered dismissing the case at pl'ff's costs, there being no evidence adduced to substantiate the case on trial.

Overruled; def't excepted.

I, W. E. Cody, official reporter of the 4th jud. district of Iowa, hereby certify that the above and foregoing is all the evidence offered and received on the trial of the above-entitled causes, so far as the same was taken at the February, 1886, term of the district court of Iowa in and for Plymouth county, with the objections of

counsel, rulings of the court thereon, and exceptions of counsel thereto.

W. E. CODY,
Official Reporter, 4th Jud. Dist., Iowa.

I, A. P. McLaren, being duly sworn, do depose and say that I am a resident of Woodbury county, Iowa; that I am personally acquainted with the defendant, Jno. Manderscheid, and have known him since about May 20th, 1885; that I was in Lemars, Ia.,
93 almost continuously from May 20th, 1885, to July 4th, 1885, and again on Oct. 2d and 3d, 1885; that I am acquainted with the saloon kept by said Manderscheid in a frame building next to Kaiser's boot and shoe store, in Lemars, Ia.; that during part of the month of June and up to July 4th, 1885, I frequently purchased lager beer and other intoxicating liquors of said defendant at his saloon above named, situated, as affiant is informed and believes, on lot 9, in block 5, in Lemars, Iowa, and in his presence and at said place drank and paid for the same; that at said time I saw said Manderscheid sell to numerous other persons at said place. I further depose and say that I purchased of said John Manderscheid, at said saloon, intoxicating liquors and then and there drank the same. On October 2d, 1885, and on the 3d day of October, 1885, in company with C. H. Hinkley, Malcom Wood, and Hartzel Ruth, I visited said saloon and procured of said John Manderscheid intoxicating liquors, which said John Manderscheid furnished us in person; that I saw said Manderscheid on said Oct. 3d, 1885, sell beer beer and other intoxicating liquors to other persons in said saloon; that a regular saloon bar with bottles and glasses is maintained in said saloon and a regular saloon business carried on there.

A. P. McLERAN.

We, C. A. Hinkley, Malcom Wood, and Hartzel Ruth, being duly sworn, do depose and say and each for himself says that he is a resident of said county and State; that he is acquainted with defendant, John Manderscheid, and his saloon, next door north of Kaiser's boot and shoe store, on Main street, in Lemars, Ia.; that on Oct. 3d, 1885, each of us, with one A. P. McLaren, visited said saloon and while there were furnished lager beer by said John Manderscheid, who was then and there tending the bar of said saloon in person; that while in there we saw other people step up to said bar
94 and saw said Jno. Manderscheid set out to them liquors of some kind to drink.

C. A. HINKLEY.
M. A. WOOD.
HARTZEL RUTH.

Duly verified Oct. 22d, 1885.

I, M. A. Wood, being duly sworn, do depose and say that I am a resident of said county and State; that I am acquainted with said John Manderscheid, def't, and his saloon, next door north of Kaiser's boot and shoe store, on Main street, in Lemars, Iowa; that on July

9th, 1885, at said saloon, I purchased of John Manderscheid in person a glass of lager beer and drank and paid for the same; that at the same time and place other persons were buying of said John Manderscheid and drinking beer and other intoxicating liquors at said bar; that James Hughes, of said county, drank with affiant at the same time.

M. A. WOOD.

Duly verified Oct. 23d, 1885.

Filed in my office Oct. 23d, 1885.

W. S. WELLIVER, *Clerk.*

In the District Court of the State of Iowa in and for Plymouth County.

HUGH CAMPBELL, Pl'ff, *vs.* JOHN MANDERSCHEID, Def't.

Affidavits in Procedure in Contempt.

STATE OF IOWA, *Plymouth County,* } *ss:*

I, John Manderscheid, on oath depose and say that I am the defendant named in the precept filed by plaintiff in the above-entitled action; that I deny having violated the writ of injunction served upon me in said cause; that as soon as said writ of injunction was served upon me enjoining me from keeping saloon or selling
95 or giving away intoxicating liquors of every kind whatsoever therein as a saloon-keeper in Lemars, Iowa, and in the building described in said precept, and immediately thereafter and on the 28th day of March, 1885, I closed up said saloon, and the same remained closed until about the 2d day of June, 1885, when it was reopened by one Henry Manderscheid, Sr.; that on or about the 15th day of May, 1885, I sold said saloon property to Henry Manderscheid, Sr., and deeded the same to him, and have not since said date been the owner of said property or any interest therein, or have I had any control thereof. The said sale as aforesaid included the lot, building, and all furniture and fixtures thereon and therein, and that since the said writ of injunction was served upon me I have not been engaged in the business of saloon-keeping or selling intoxicating liquors of any kind whatsoever at retail within the county of Plymouth or elsewhere myself or as the clerk, agent, or employé of any other person; neither have I since said time given any intoxicating liquors of any kind away; that I have no recollection of having drawn any beer or set up any drinks to any person in the saloon formerly owned and carried on by me since the injunction was served upon me as aforesaid, as is alleged in said precept and set out in the affidavits and testimony produced by plaintiff in this action; that, although I have no recollection of drawing any beer or handing any beer or any other intoxicating liquors to the persons testifying on behalf of the plaintiff in this cause or to those whose affidavits are attached to said precept, still, if I did at any

time do so, it was with no intention of disobeying said injunction or committing a contempt of court, as I understood and believed that when I disposed of my saloon business and property and discontinued the business entirely I was relegated to the rights and privileges of an ordinary, free American citizen, and that any voluntary accommodation which I might grant to a barkeeper or a clerk in a saloon in Lemars would not be a violation of said injunction
96 nor any act of contempt of this honorable court. I further depose and say that I have read the testimony of Malcolm Wood, given at the last October term of the district court in and for Plymouth county, in this cause, wherein he states that he was in my saloon, the premises described in said precept, on the 9th day of July, 1885, and saw James Hughes and Mr. Duus therein, and that I was behind the bar and passed out beer for him and others to drink, and that I most emphatically state on my oath that said statement of said Wood is false in every particular; that I was not in said saloon on said day; that I went to Sioux City on the nine o'clock train a. m. of Thursday, July 9th, 1885, and did not return therefrom until 1.40 o'clock a. m. of Friday, July 10th, 1885; that while in Sioux City and on the afternoon of said 9th day of July I was met there by J. P. Kieffer, Esq., editor of the Lemars Globe, and he was there with me transacting some business and returned to Lemars with me on the same train; that I do not remember of ever having seen said Wood in said saloon during the time it was owned and carried on by me or since it has been owned and carried on by others, although I know the man when I see him; that since said writ of injunction was served on me and the saloon property as aforesaid I have neither owned or controlled any property, building, or place in which intoxicating liquors have been sold at retail or given away.

I would therefore respectfully request this honorable court that this proceeding be dismissed, and that this deponent be discharged with cost.

JOHN MANDERSCHEID.

Subscribed and sworn to before me and in my presence by the said John Manderscheid this 27th day of November, 1885.

J. C. KELLY,
Notary Public.

[SEAL.]

97 STATE OF IOWA, }
Plymouth County, } ss:

I, J. P. Kieffer, on oath depose and say that I am a citizen of Lemars, in said county, and have resided in said city during nearly four years; that I am well acquainted with John Manderscheid, the defendant in this case, and have known him during the period of my residence in Lemars; that on Thursday, the 9th day of July, 1885, I remember that John Manderscheid, the said defendant, went to Sioux City, Iowa, leaving Lemars on the 9 o'clock a. m. Illinois

Central train of said day. I had been in his company that morning and accompanied him to the train and saw him off. It was agreed upon between us previous to his departure on that day that should he not return on the four o'clock p. m. train of said day I should go down to Sioux City on the six o'clock p. m. St. Paul train of said day and meet him there. I was at the depot at the 4 o'clock p. m. train of said day, but said Manderscheid did not return. I therefore went to Sioux City on the 6 o'clock p. m. — of said day, and on my arrival met Mr. Manderscheid there, where we remained until the train going north the next day at 1.40 o'clock a. m., July 10th, 1885, which we, Mr. Manderscheid and myself, took, and reached Lemars a little after 1 o'clock a. m. Friday, July 10th, 1885. I am positive as to these dates, having refreshed my memory in relation thereto by referring to things done and business transacted on that occasion.

JOHN P. KIEFFER.

STATE OF IOWA, }
Plymouth County, } *ss:*

I, John Engalls, upon oath do depose and say that I am a citizen and a resident of the city of Lemars, in said county, and deputy marshal of said city; that I have resided in said city for upwards of five years and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know of my own personal knowledge of the date when said Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he closed up his saloon and quit the business; that said saloon remained closed for several weeks and was then opened by other parties, as I was informed and believe; that since the opening of said saloon as aforesaid I have been therein almost every day and some days several times; that during the period from the time the saloon was reopened as aforesaid until the commencement of this action I never saw said Manderscheid behind the bar or sell or give away to any person any intoxicating liquors of any kind or wait upon any customer in said saloon, although I have sometimes seen him in said saloon drinking with other customers outside of the bar. Either John P. Maes or Henry Manderscheid and sometimes both of them were behind the bar waiting on customers at the times when I have been in said saloon as aforesaid.

98

JOHN ENGALLS.

STATE OF IOWA, }
Plymouth County, } *ss:*

I, M. Sutton, on oath depose and say that I am by trade a carpenter and builder; that I have resided in the city of Lemars for about ten years last past; that I am well acquainted with John Manderscheid, one of the defendants in the case now pending in this court, wherein Hugh Campbell is plaintiff and John Manderscheid *et al.* are defendants; that I know when the writ of injunction was

served upon him in said cause; that as soon as he was enjoined from selling and disposing of intoxicating liquors he closed up his saloon, locked the doors, and placed a shingle on the front door on which was written, Saloon closed, and that the same remained closed about two months; that I have been in said saloon frequently
99 since the same opened up after it was closed as aforesaid, but have never seen said Manderscheid waiting on customers or selling or offering to sell or give away any intoxicating liquors whatever since he was enjoined as aforesaid.

M. SUTTON.

STATE OF IOWA, } ss:
Plymouth County, }

I, Carl Furchner, on oath depose and say that I am acquainted with John Manderscheid, the party defendant in the proceeding for contempt brought in this court, wherein Hugh Campbell is plaintiff and John Manderscheid *et al.* are defendants; that I know, of my own personal knowledge, of the said Manderscheid being enjoined, and that immediately after the injunction was served upon him in this case that he transferred the said property, being the premises described in the affidavits filed in this case by the plaintiff, and sold out his business and all his saloon interest in Lemars, Iowa, and has not since that time been interested, directly or indirectly, in the keeping of any saloon or in the selling at retail of beer or any other intoxicating liquors.

CARL FURCHNER.

STATE OF IOWA, } ss:
Plymouth County, }

I, Albert Metzmeyer, being duly sworn, do depose and say that I am 28 years of age; have lived in Lemars, in said county, for over two years past; that I am engaged in clerking for Spring Bros. in their hardware and machine business; that I am well acquainted with the defendant, John Manderscheid, and remember the time when the writ of injunction was served on him in the above-entitled cause; that I know, from my own personal knowledge, that as soon as said writ of injunction was served upon him he sold out his saloon business, and has not since been engaged in any way in keeping a saloon in or about said premises or in the city of Lemars; that
100 I have been in said saloon formerly conducted by the said Manderscheid frequently since the same has been conducted by the parties to whom Mr. Manderscheid disposed of it, but have never seen Mr. Manderscheid in said saloon selling or offering to sell or give away any intoxicating liquors; that the building in which said saloon was kept is just across the street from my place of business.

—— ——.

STATE OF IOWA, } ss:
Plymouth County, }

I, Arthur Hebb, upon oath depose and say that I am 26 years of age and by profession a printer, and have been engaged as foreman of the "Globe" office for the past year; that I have resided in Lemars for the past two years; that I remember the time when the said defendant was enjoined from selling or disposing of or giving away intoxicating liquors in his building described in the above-entitled action; that I know that immediately after he was so enjoined he desisted from making any sales, and very soon thereafter informed me that he had sold out the said saloon business and had nothing further to do therewith; that I have been in said saloon quite a number of times since the said injunction was served upon him, but have never seen him behind the bar waiting on customers or selling or offering to sell or give away any intoxicating liquors in said saloon or any other place in Lemars.

ARTHUR HEBB.

STATE OF IOWA, } ss:
Plymouth County, }

I, James Mohan, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars, in said county, and have resided in said city upwards of three years, and upwards of 14 years in said county, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of
101 my own personal knowledge, of the date when said John Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to Henry Manderscheid, who has carried on the same since then, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the said Henry Manderscheid until the commencement of this action I never saw said John Manderscheid behind the bar or sell or give to any person any intoxicating liquors of any kind or wait upon any customer of said business, athough I have sometimes seen him in said saloon drinking with other parties outside the bar.

JAMES MOHAN.

Duly verified.

STATE OF IOWA, } ss:
Plymouth County, }

I, J. C. Morris, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars, in said county, and have resided in said city upwards of 14 years, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when said

J. Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to J. B. Steines, who has carried on the same, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the said J. B. Steines until the commencement of this
102 action I never saw said John Manderscheid behind the bar or sell or give to any person any intoxicating liquors of any kind or wait upon any customer of said business, although I have sometimes seen him in said saloon drinking with other parties outside of the bar.

J. C. MORRIS.

Duly verified.

STATE OF IOWA, }
Plymouth County, } ss:

I, M. Daly, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars, in said county, and have resided in said city upwards of ten years, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when said J. Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to J. B. Steines, who has carried on the same since then, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the said J. B. Steines until the commencement of this action I never saw said J. Manderscheid behind the bar or give to any person any intoxicating liquors of any kind or wait upon any customer of said business, although I have sometimes seen him in said saloon drinking with other parties outside the bar.

M. DALY.

Duly verified.

STATE OF IOWA, }
Plymouth County, } ss:

I, Nic Hoelzner, being duly sworn, upon oath depose and say that I am a citizen and resident of the city of Lemars, in
103 said county, and have resided in said county upwards of twelve years, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when the said J. Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to Henry Manderscheid, who has carried on the same since then, as I am informed

and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time said business was purchased and controlled by the said Henry Manderscheid, Sr., until the commencement of this action I never saw said John Manderscheid behind the bar or sell or give to any person any intoxicating liquors of any kind or wait upon any customer of said business, although I have sometimes seen him in said saloon drinking with other parties outside of the bar.

NIC HOELZNER.

Duly verified.

STATE OF IOWA, *Plymouth County,* } ss:

I, W. H. Krudwig, being duly sworn, depose and say that I am a resident of the city of Lemars, in said county, and have resided in said city upwards of eleven years, and upwards of 11 years in said county, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when said John Manderscheid was enjoined from selling, disposing —, or giving away intoxicating liquors in Lemars, Iowa, and I have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to other
104 parties, who have carried on the same since then, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time said business was purchased and controlled by the said other parties until the commencement of this action I never saw said John Manderscheid behind the bar or sell or give to any person any intoxicating liquors of any kind or wait upon any customer of said business, although I have sometimes seen him in said saloon drinking with other parties outside of the bar.

W. H. KRUDWIG.

Duly verified.

STATE OF IOWA, *Plymouth County,* } ss:

I, W. H. Philleo, being duly sworn, depose and say that I am a citizen and resident of the city of Lemars, in said county, and have resided in said city upwards of three years, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when said J. Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to other parties, who have carried on the same since then, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the said other parties until the commencement of this action I have never seen said J. Manderscheid behind the bar waiting on cus-

tomers of said saloon or giving away to any person intoxicating liquors of any kind whatsoever.

W. H. PHILLEO.

Duly verified.

105 STATE OF IOWA, } ss:
Plymouth County, }

I, P. K. Edwards, being duly sworn, upon oath depose and say that I am a citizen and resident of the city of Lemars, in said county, and have resided in said county upwards of about 5 years, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when the said J. Manderscheid was enjoined from selling, disposing of, or giving away intoxicating liquors in Lemars, Iowa, and have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to other parties, who have since carried on the same in said building, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time said business was purchased and controlled by the said other parties until the commencement of this action I have never seen said John Manderscheid behind the bar waiting on customers of said saloon or selling or giving away to any person any intoxicating liquors whatsoever.

P. K. EDWARDS.

Duly verified.

STATE OF IOWA, } ss:
Plymouth County, }

I, J. C. Hayward, being duly sworn, depose and say that I am a resident of the city of Lemars, in said county, and have resided in said city nearly fifteen years, and upwards of 15 years in said county, and am well acquainted with John Manderscheid, the defendant in this action or proceeding; that I know, of my own personal knowledge, of the date when said John Manderscheid was enjoined from selling, disposing —, or giving away intoxicating liquors in
106 Lemars, Iowa, and I have personal knowledge of the fact that as soon as he was so enjoined he sold out his business to other parties, who have since carried on the same in said building, as I am informed and believe; that I have been in said saloon almost every day, and some days several times, and during the period from the time the said business was purchased and controlled by the said other parties until the commencement of this action I have never seen said J. Manderscheid behind the bar waiting on customers of said saloon or giving away to any person intoxicating liquors of any kind whatsoever.

J. C. HAYWARD.

Duly verified.

Notice.

To said defendants:

You and each of you are hereby notified that at the October term, 1885, of said court a rule was entered against you in the above cause requiring you, on or before the first day of the next term of said court, to appear and show cause why you should not be punished for violating the writ of injunction issued therein and served upon you.

Said court convenes at Lemars, Iowa, in said county, at the court-house, on Feb. 23, 1886, at which time you can appear and show cause, if you see proper.

STRUBLE, RISHEL & HART,
Att'ys for Pl'ff.

Motion to Strike.

Now comes the defendant in the above-entitled action and moves the court to strike from the files in this case the paper filed herein by pl'ff, and called a notice of rule, and assigns the following reasons therefor:

1st. Such paper is no writ, order, notice, rule, or motion known to any proceedings which have been had or can be had in this case, and can have no connection therewith.

107 2d. Such paper is not a copy of any writ, notice, order, rule, or motion known to the statutes of Iowa or the practice of the courts of Iowa as having any relevancy to any proceedings which have been had or can be had in this case or any part or portion thereof, and can have no connection whatever therewith, either for jurisdictional purposes or any other purpose.

ARGO, KELLY & AUGIR AND
O. C. TREADWAY,
Att'ys for Def't.

In the District Court of Plymouth County, Iowa.

HUGH CAMPBELL, Pl'ff,
vs.
JOHN MANDERSCHEID, Mrs. JOHN MANDERSCHEID, and NIC HIRSCH, Defendants. } Decree.

And now, to wit:

On this 8th day of March, A. D. 1886, it being at the regular term of the district court in and for Plymouth county, Iowa, this cause coming on for a continuation of the hearing commenced at the October, 1855, term of said district court in and for said county upon the sworn affidavit of I. S. Struble, filed in said cause on October 16th, 1885, charging, as against the defendant, John Manderscheid, that he had violated the writ of injunction issued in this cause, at which hearing at said October term, 1885, of said court Struble, Rishel & Sartori appeared for the plaintiff, and the defendant, John Manderscheid, appeared by Argo, Kelly & Augir, his attorneys, and at this hearing the plaintiff appears by Struble, Rishel

& Hart, his attorneys, and the defendant, John Manderscheid, by his attorneys, Argo, Kelly & Augir and O. C. Treadway, and the court, upon an inspection of the pleadings, notices, writ of injunction, return of the officer as to the service of writ of injunction, find that the following proceedings have been had in this cause, viz: That on the 30th day of March, 1885, a writ of injunction was, on the order of said district court in and for said county and State, issued in this cause out of the office of the clerk of the district court of said county against the defendants, John Manderscheid, Mrs. John Manderscheid, and Nic Hirsch, enjoining and restraining them from selling or in any manner disposing of any intoxicating liquors, to wit, ale, wine, beer, gin. brandy, whiskey, or any other kind of intoxicating liquors, upon lot No. nine (9), in block No. five (5), in Lemars, Iowa, and enjoining and restraining the defendants, John and Mrs. John Manderscheid, from using or permitting to be used for the purpose of selling intoxicating liquors *in* the said building situated on said premises until the further order of said district court; that on said 30th day of March, 1885, the said writ of injunction was duly and legally served upon the defendants, John Manderscheid and Mrs. John Manderscheid and Nic Hirsch, by G. Haerling, then sheriff of Plymouth county, Iowa; that on October 16th, 1885, an affidavit executed by I. S. Struble, one of the attorneys for the plaintiff in this action, alleging the issuance and service of said writ of injunction in substance as set forth above in this decree, and charging that the defendant, John Manderscheid, was then and for some months past had been engaged in selling intoxicating liquors upon said premises described in said writ of injunction, contrary to law and the terms of said writ, asking for a rule upon said defendant, John Manderscheid, to show cause why he should not be punished for contempt of court; that on the 16th day of October, 1885, a rule on the defendant, John Manderscheid, returnable on the following Monday, was granted by said district court of Plymouth county, Iowa, he having no personal knowledge of the facts charged requiring him to show cause why he should not be find for contempt for
109 violating said writ of injunction; that on the 19th day of October, 1885, notice of said rule was duly and legally served upon the defendant, John Manderscheid; that on the 23d day of October, 1885, hearing on said affidavit and complaint of said I. S. Struble was commenced in the said district court of Plymouth county, Iowa, and the following-named witnesses were examined orally in open court on behalf of the plaintiff, their evidence being reduced to writing by the short-hand reporter, by direction of said court, and filed in said cause, viz., C. A. Hinkley, M. A. Wood, and Hartzel Ruth; and afterwards, to wit, on the 23d day of October, 1885, the plaintiff, in further support of the affidavit and complaint of violation of said writ of injunction, files in said cause the written affidavits of said parties above named, viz., C. A. Hinkley, M. A. Wood, Hartzel Ruth, and also the affidavits of A. P. McLaren, and I. S. Struble; that thereafter and before completing said hearing the said court adjourned; that on the 10th day of February, 1886, the plain-

tiff caused to be served upon the defendant, John Manderscheid, a written notice to the effect that at the October term, 1885, of said district court a rule was entered against said defendant, John Manderscheid, requiring him, on or before the first day of this present term, to appear and show cause why he should not be punished for violating the writ of injunction issued in this cause, and notifying him that the said court would convene at Lemars, Iowa, on February 23d, 1886, at which time he could appear and show cause, if he should see proper, which notice is this day filed in this cause. The defendant Manderscheid files motion to strike from the files the paper filed by pl'ff called a notice of rule; motion overruled; def't excepts; and now, this cause being at a hearing upon the affidavits filed by the plaintiff and hereinabove in this decree referred to, together with the evidence of witnesses above herein named taken at the October term, 1885, of this court, and also upon the
110 affidavits of the following-named parties, filed by and on behalf of the defendant, to wit, John Manderscheid, defendant; John P. Kieffer, John Engalls, M. Sutton, Carl Furchner, Albert Metzmeyer, J. C. Morris, M. Daly, Nic Hoelzner, Arthur Hebb, W. H. Krudwig, W. H. Philleo, James Mohan, P. K. Edwards, and J. C. Hayward, the plaintiff and the defendant, John Manderscheid, both appearing, by their attorneys, as hereinbefore in this decree set forth; and the court, upon considering all said affidavits filed by both plaintiff and defendant, John Manderscheid, and the oral proof introduced by the plaintiff at the October term, 1885, of said court, and also the pleadings in the cause and the writ of injunction issued herein and served upon said defendant, John Manderscheid, finds the following facts in addition to those hereinabove in this cause recited, viz: That at various times between May 20, 1885, and October 3d, 1885, including the latter date, the defendant, John Manderscheid, sold and disposed of intoxicating liquors to various persons upon the following-described premises, to wit, lot No. nine (9), in block No. five (5), in Lemars, Plymouth county, Iowa, contrary to and in violation of the writ of injunction issued against and served upon said defendant, John Manderscheid, and contrary to and in violation of the statutes of Iowa prohibiting the sale of intoxicating liquors, and is therefore guilty of a contempt under and by virtue of chapter one hundred and forty-three (143), Laws of the 20th General Assembly of Iowa. It is therefore ordered and adjudged by the court that the defendant, John Manderscheid, pay to the clerk of the district court in and for Plymouth county, Iowa, to be dealt with and disposed of by him according to law, a fine of five hundred dollars, and that he be imprisoned in the jail of said county for the period of three months from and after the day he is first imprisoned therein, in accordance with this order, and that a warrant be issued by the clerk of the district court of said county and State au-
111 thorizing and requiring the sheriff of said county to execute this judgment. It is further ordered that if within thirty days from this time the defendant, John Manderscheid, shall pay the fine hereby adjudged against him he shall be released from confinement and so much of this sentence as relates to confinement shall

be remitted; but if he does not pay the said fine he shall be confined in the said county jail for the full period of three months, as hereinabove in this decree named; to all of which rulings and findings the defendant, John Manderscheid, duly excepts.

STATE OF IOWA, } *ss:*
Plymouth County, }

I, W. S. Welliver, clerk of the district court in and for said county and State, do hereby certify that the within and foregoing is a true, correct, and compared copy of the record in the case so entered as the same appears of record in my office, and of the whole thereof.

W. S. WELLIVER,
Clerk Dist. Court.

112 And on the 19th day of June, 1886, said cause with others submitted together were decided and a final judgment rendered and decision or opinion of the court filed, said final judgment and opinion having been heretofore fully set out in the return to the writ in the case of Eugene Eilenbecker, pl'ff in error, *vs.* Dist. Court of Plymouth County, Iowa, said causes, to which reference is here made, being—

1. John Manderscheid *vs.* Dist. Court, etc.
2. John Manderscheid *vs.* " " "
3. Eugene Eilenbecker *vs.* " " "
4. Henry Brauch *vs.* " " "
5. John B. Greenen *vs.* " " "
6. John N. Peysen *vs.* " " "

And on the 3d day of Sept., 1886, there were filed in the office of the clerk of said supreme court a petition, bond, writ of error, and citation in each of said causes, the originals of which in the
113 case of Eugene Eilenbecker are attached to the return heretofore made, and I now attach hereto and make a part of this return said petition, writ, bond, and citation in each of the other cases, and have retained true copies thereof in my office; and this transcript, together with the transcript heretofore made and forwarded in the case of Eilenbecker *vs.* Dist. Court, etc., makes a full and complete return in each of said cases.

STATE OF IOWA, *ss:*

I, G. B. Pray, clerk of the supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the record (printed abstract) in the case of John Manderscheid *vs.* The Dist. Court of Plymouth County, Iowa, which cause, together with five other like causes, were submitted together, and one decision and judgment entry heretofore certified in the return to the writ
114 in the case of Eugene Eilenbecker relates to all of said causes.

And I further certify that the petition, writ of error bond, citation, and writs of error in these cases—

1. John Manderscheid *v.* Dist. Court, etc.
2. John Manderscheid *v.* " " "
4. Henry Brauch *v.* " " "
5. John B. Greenen *v.* " " "
6. John N. Peysen *v.* " " "

Are hereto attached in original form as a part of this return, and this return is made in obedience to said writs.

Seal of the Supreme Court of Iowa.

In testimony whereof witness my signature and official seal, at Des Moines, in the State of Iowa, this 22d day of Sept., 1886.

G. B. PRAY,
Clerk Sup. Court of Iowa.

115 JOHN MANDERSHEID, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now John Mandersheid, a citizen of Plymouth county and State of Iowa, by Argo & Kelly and Fred. O'Donnel, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between John Mandersheid, plaintiff, and The District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months unless said fine be paid within thirty days after the rendition of said judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, wherein one Hugh Campbell was plaintiff and your petitioner was defendant, in which case your petitioner obtained a writ of certiorari from the supreme court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court in which said decision affirming the decision of said district court was rendered is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have

compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage of the said John Mandersheid, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY AND FRED. O'DONNELL,
Attorneys for Petitioner.

116 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Iowa, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of the plea *in* which is in the said court, before you, being the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between John Manderscheid, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said John Manderscheid, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witnesseth the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-

six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. Court, Northern Dist. Iowa,
By J. H. BOLTON, *D'p'ty.*

Allowed:
AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

117 UNITED STATES OF AMERICA, *ss:*

To Hugh Campbell and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, & The District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein John Manderscheid is plaintiff and The District Court of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, }
Plymouth County, } *ss:*

We do hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for Defendant in Error.

118 We, the undersigned, John Mandersheid, principal, and G. C. Maclagan, Elizabeth Eilenbecker, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon conditions as follows:

Whereas the said John Manderschied has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa rendered on the 19th day of June, 1886, in a proceeding wherein the said John Manderschied, was plaintiff and The District Court of Plymouth County, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district

court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said John Mandershied sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed ;

And whereas the said John Mandersheid has appealed by writ of error from the judgment of said supreme court of Iowa to the Supreme Court of the United States of America:

Now, if the said John Mandersheid will prosecute his appeal and said writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of said Supreme Court upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court and pay and perform the judgment of the supreme court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

JOHN MANDERSCHEID, *Principal.*
G. C. MACLAGAN,
G. C. MACLAGAN,
ELISABETH EILENBEKER, *Sureties.*

STATE OF IOWA, } *ss:*
Plymouth County, }

I, G. C. Maclagan — Elizabeth Eilenbecker, being each duly sworn, and each for himself deposes and says that he is a surety on the within and foregoing bond; that I am worth in property in the State of Iowa not exempt from execution in amount and value equal to the sum of one thousand dollars; that I am a freeholder in said State of Iowa; that I own in my own right property in the State of Iowa of the value of one thousand dollars over and above all my debts & liabilities and incumbrances thereon which is liable to execution.

G. C. MACLAGAN.
G. C. MACLAGAN.
ELISABETH EILENBEKER.

Notarial Seal, Charles F Schmidt, Attorney-at-Law, Iowa.

Subscribed and sworn to before me and in my presence by the said G. C. Maclagan — Elizabeth Eilenbecker this 30th day of June, 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice of Sup. Court.

STATE OF IOWA, } ss:
Plymouth County, }

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the sureties on the annexed bond, G. C. MacLagan and Elizabeth Enilenbecker, are amply good and sufficient for the penalty named therein, and I would approve said bond if the same was presented to me for approval.

Witness my hand and seal of said dist. court, affixed this 1st day of July, A. D. 1886.

Seal of the District Court, Plymouth Co., Iowa.

W. S. WELLIVER, *Clerk.*

119 [Endorsed:] John Mandersheid, plaintiff in error, *vs.* The District Court of Plymouth County, Iowa, defendant in error. [Stamped:] Filed Sep. 3, 1886. G. B. Pray, clerk sup. court. 12123.

120 (1.) Pet., writ, etc., John Mandersheid case.

121 No. 2.

JOHN MANDERSHEID, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now John Mandersheid, a citizen of Plymouth county and State of Iowa, by Argo & Kelly & Fred. O'Donnel, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between John Mandersheid, plaintiff, and The District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months unless said fine be paid within thirty days after the rendition of said judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, wherein one Joel Gardner was plaintiff and your petitioner was defendant, in which case your petitioner obtained a writ of certiorari from the supreme court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court in which said decision affirming the decision of said district court was rendered is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein

your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six (6) of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage to the said John Mandersheid, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY AND FRED. O'DONNELL,
Attorneys for Petitioner.

122 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Iowa:

Because in the records and proceedings and also in the rendition of the judgment of the plea *in* which is in the said court, before you, being the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between John Manderscheid, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said John Manderscheid, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court

of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. Court, Northern Dist. Iowa,
By J. H. BOLTON, *D'p'ty.*

Allowed.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

123 UNITED STATES OF AMERICA, *ss:*

To Joel Gardner and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, and The District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washingon on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein John Manderscheid is plaintiff and The District Court of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, }
Plymouth County, } *ss:*

We hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for Defendant in Error.

124 We, the undersigned, John Mandersheid, principal, and G. C. Maclagan, Elizabeth Eilenbecker, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon conditions as follows:

Whereas the said John Manderscheid has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa rendered on the 19th day of June, 1886, in a proceeding wherein the said John Manderscheid was plaintiff and The District Court of Plymouth county, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said John Mandersheid sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed;

And whereas the said John Manderscheid has appealed by writ of error from the judgment of said supreme court of Iowa to the Supreme Court of the United States of America:

Now, if the said John Manderscheid will prosecute his appeal and said writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of said Supreme Court upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court and pay and perform the judgment of the Supreme Court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

JOHN MANDERSCHEID, *Principal.*
G. C. MACLAGEN,
G. C. MACLAGAN,
ELISABETH EILENBEKER, *Sureties.*

STATE OF IOWA, *Plymouth County,* } ss:

I, G. C. Maclagan & Elizabeth Eilenbecker, being each duly sworn, and each for himself deposes and says that he is a surety on the within and foregoing bond; that I am worth in property in the State of Iowa not exempt from execution in amount and value equal to the sum of one thousand dollars; that I am a freeholder in said State of Iowa; that I own in my own right property in the State of Iowa of the value of one thousand dollars over and above all my debts and incumbrances thereon which is liable to execution.

G. C. MACLAGAN.
G. C. MACLAGAN.
ELISABETH EILENBEKER.

Notarial Seal, Charles F. Schmidt, Attorney-at-Law, Iowa.

Subscribed and sworn to before me and in my presence by the said G. C. Maclagan & Elizabeth Eilenbecker this 30th day of June, A. D. 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice of Sup. C't.

STATE OF IOWA, *Plymouth County,* } *ss:*

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the sureties on the annexed bond, G. C. Maclagan and Elizabeth Enilenbecker, are amply good and sufficient for the penalty named therein, and I would approve said bond if the same was presented to me for approval.

Seal of the District Court, Plymouth Co., Iowa.

Witness my hand and seal of said dist. court, affixed this 1st day of July, A. D. 1886.

W. S. WELLIVER, *Clerk.*

[Endorsed:] John Mandersheid *vs.* The District Court of Plymouth county.

125 [Endorsed:] John Mandersheid, plaintiff in error, *vs.* The District Court of Plymouth County, Iowa, defendant in error. Filed Sep. 3, 1886. G. B. Pray, clerk sup. court. 12124.

126 (2.) Pet., writ, etc., John Manderschied case.

127 HENRY BRAUCH, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now Henry Brauch, a citizen of Plymouth county and State of Iowa, by Argo & Kelly and Fred. O'Donnel, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between Henry Brauch, plaintiff, and The District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months unless said fine be paid within thirty days after the rendition of the judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, — one G. N. Thompson was plaintiff and your petitioner was defendant, in which case petitioner obtained a writ of certiorari from the supreme

court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court in which said decision affirming the decision of said district court was rendered is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage of the said Henry Brauch, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY & FRED. O'DONNELL,
Attorneys for Petitioner.

128 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of Iowa:

Because in the records and proceedings and also in the rendition of the judgment of the plea *in* which is in the said court, before you, being the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between Henry Brauch, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of the State of

Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said Henry Brauch, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witnesseth the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. Court, Northern Dist. Iowa,
By J. H. BOLTON, *D'p'ty.*

Allowed:
AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

129 UNITED STATES OF AMERICA, *ss:*

To G. N. Thompson and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, and The District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein Henry Brauch is plaintiff and The District *County* of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, }
Plymouth County, } *ss:*

We hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for Defendant in Error.

130 We, the undersigned, Henry Brauch, principal, and G. C. Maclagan, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon the conditions as follows:

Whereas the said Henry Brauch has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa to the Supreme Court of the United States of America rendered on the 19th day of June, 1886, in a proceeding where- the said Henry Brauch was plaintiff and The District Court of Plymouth County, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said Henry Brauch sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed:

Now, if the said Henry Brauch will prosecute his appeal and writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of the said Supreme Court upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court and pay and perform the judgment of the supreme court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

HENRY BRAUCH, *Principal.*
G. C. MACLAGAN,
G. C. MACLAGAN, *Sureties.*

STATE OF IOWA, }
Plymouth County, } *ss:*

I, G. C. Maclagan, each being duly sworn, on oath depose and say and each for himself says that he — a freeholder of the State of Iowa, and has property in the State worth two thousand dollars and

property liable to execution in this State equal to the sum of one thousand dollars over and above all debts and liabilities and incumbrances thereon.

G. C. MACLAGAN.
G. C. MACLAGAN.

Notarial Seal, Charles F. Schmidt, Attorney-at-Law, Iowa.

Subscribed and sworn to before me and in my presence by the said G. C. Maclagan this 30th day of June, 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice of Sup. C't.

STATE OF IOWA, *Plymouth County,* } *ss:*

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the surety on the within bond, G. C. MacLagan, is amply good and sufficient for the penalty named therein, and I would approve said bond if the same was presented to me for approval.

Seal of the District Court, Plymouth Co., Iowa.

Witness my hand and seal of said district court, affixed 1st day of July, A. D. 1886.

W. S. WELLIVER, *Clerk.*

[Endorsed:] Henry Brauch *vs.* The District Court of Plymouth Co., Ia.

131 [Endorsed:] Henry Brauch, plaintiff in error, *vs.* The District Court of Plymouth county, Iowa, defendant in error. Filed Sep. 3, 1886. G. B. Pray, clerk sup. court. 12126.

132 (4.) Pet., writ, &c., Henry Brauch case.

133 J. B. GREENEN, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error.
} Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now J. B. Greenen, a citizen of Plymouth county and State of Iowa, by Argo & Kelly & Fred. O'Donnel, his attorneys, and complains that in the record and proceedings and also in the rendition of a judgment in a suit between J. B. Greenen, plaintiff, and The District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner, and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months

unless said fine be paid within thirty days after the rendition of said judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, wherein one D. C. Reynolds was plaintiff and your petitioner was defendant, in which case your petitioner obtained a writ of certiorari from the supreme court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court in which said decision affirming the decision of said district court was rendered is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six (6) of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage to the said J. B. Greenen, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY & FRED. O'DONNELL,
Attorneys for Petitioner.

134 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Iowa, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of the plea *in* which is in the said court, before you, be-

ing the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between J. B. Greenen, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said —— ——, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witnesseth the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this 26th day of June, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. C., Northern Dist. Iowa,
By J. H. BOLTON, *D'p'ty.*

Allowed.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

135 UNITED STATES OF AMERICA, *ss:*

To D. C. Reynolds and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, and The District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washingon on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein J. B. Greenen is plaintiff and The District Court of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, } ss:
Plymouth County, }

We hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for Defendant in Error.

136 We, the undersigned, J. B. Greenen, principal, and Elizabeth Greenen, —— ——, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon conditions as follows:

Whereas the said J. B. Greenen has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa rendered on the 19th day of June, 1886, in a proceeding wherein the said J. B. Greenen was plaintiff and The District Court of Plymouth County, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said J. B. Greenen sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed;

And whereas the said J. B. Greenen has appealed by writ of error from the judgment of said supreme court of Iowa to the Supreme Court of the United States of America:

Now, if the said J. B. Greenen will prosecute his appeal and said writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of said Supreme Court upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court and pay and perform the judgment of the supreme court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

F. B. GREENEN, *Principal.*
ELIZABETH GREENEN.
ANTHONY THOMA, *Sureties.*

STATE OF IOWA, } ss:
Plymouth County, }

I, Elizabeth Greenen, —— ——, being each duly sworn, and each for himself deposes and says that he is a surety on the within and foregoing bond; that I am worth in property in the State of Iowa

not exempt from execution in amount and value equal to the sum of one thousand dollars; that I am a freeholder in said State of Iowa; that I own in my own right property in Iowa of the value of one thousand dollars over and above all my debts and liabilities and incumbrances thereon which is liable to execution.

ELIZABETH GREENEN.
ANTHONY THOMA.

Notarial Seal, Charles F. Schmidt, Attorney-at-Law, Iowa.

Subscribed and sworn to before me and in my presence by the said Elizabeth Greenen — Anthony Thoma this 30th day of June, 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice of Sup. C't.

STATE OF IOWA, } ss:
Plymouth County, }

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the sureties on the annexed bond, Elizabeth Greenen and Anthony Thoma, are amply good and sufficient for the penalty named therein, and I would approve said bond if the same was presented to me for approval.

Witness my hand and seal of said dist. court, affixed this 1st day of July, A. D. 1886.

Seal of the District Court, Plymouth Co., Iowa.

W. S. WELLIVER, *Clerk.*

[Endorsed:] John B. Greenen, plaintiff in error, *vs.* The District Court of Plymouth County, Ia., def't in error.
[Endorsed:] J. B. Greenen *vs.* The District Court.
137 [Endorsed:] J. B. Green, plaintiff in error, *vs.* The District Court of Plymouth County, Iowa, defendant in error. Filed Sep. 3, 1886. G. B Pray, clerk sup. court. 12127.

138 (5.) Pet., writ, etc., John B. Greenen case.

139 J. N. PEYSEN, Plaintiff in Error,
vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, Defendant in Error. } Petition for Writ of Error.

To the Honorable Austin Adams, chief justice of the supreme court of the State of Iowa:

Comes now John N. Peysen, a citizen of Plymouth county and State of Iowa, by Argo & Kelly and Fred. O'Donnel, his attorneys,

and complains that in the record and proceedings and also in the rendition of a judgment in a suit between John N. Peysen, plaintiff, and The District Court of Plymouth County, Iowa, defendant, determined in the supreme court of the State of Iowa, a judgment was rendered against your petitioner and he was ordered to pay a fine of five hundred dollars and be imprisoned for three months unless said fine be paid within thirty days after the rendition of the judgment, which judgment was based upon a judgment rendered by the district court of Plymouth county, Iowa, — one Wm. H. Briggs was plaintiff and your petitioner was defendant, in which case petitioner obtained a writ of certiorari from the supreme court of the State of Iowa to review the proceedings of said district court aforesaid; that upon a hearing of said application in said supreme court judgment was rendered against your petitioner affirming the decision and judgment rendered by the said district court; that said supreme court, in which said decision affirming the decision of said district court was rendered, is the highest court of law and equity in the State of Iowa in which a decision could be had in said suit, and in which a final judgment was rendered against your petitioner on the 19th day of June, 1886, in said suit, wherein your petitioner was convicted upon *ex parte* affidavits and was not confronted with the witnesses who testified against him and, as your petitioner avers, contrary to and in violation of article six of the amendments to the Constitution of the United States of America, which provides that in all criminal prosecutions the accused shall have and enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed, and to be informed of the nature of the cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense; that your petitioner alleges that the decision and judgment of said supreme court was and is erroneous and in violation of section one of article fourteen of the Constitution of the United States, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of any citizen of the United States, nor shall any State deprive any person of liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the law; all of which appears in the records and proceedings of said supreme court in said suit, and in which manifest error hath happened, to the great damage to the said J. N. Peysen, your petitioner herein.

Wherefore he prays for the allowance of a writ of error and a stay of proceedings until the same shall have been determined by the Supreme Court of the United States, and for such other process as may cause the same to be corrected by said Supreme Court.

ARGO & KELLY AND FRED. O'DONNELL,
Attorneys for Petitioner.

140 UNITED STATES OF AMERICA, *ss:*

To Wm. H. Briggs and Struble, Rishel & Hart, his attorneys, and A. J. Baker, attorney general of Iowa, and The District Court of Plymouth County, Iowa:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein John N. Peysen is plaintiff and said The District Court of Plymouth County, Iowa, is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Austin Adams, chief justice of the supreme court of Iowa, this 26th day of June, 1886.

AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

STATE OF IOWA, *Plymouth County,* } *ss:*

We hereby accept due, legal, and timely service of the above citation and acknowledge receipt of copy.

C. H. LEWIS,
Judge of the 4th Judicial District of Iowa.

STRUBLE, RISHEL & HART,
Attorneys for the Defendant in Error.

141 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the State of Iowa, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of the plea *in* which is in the said court, before you, being the highest court of law and equity of the said State of Iowa in which a decision could be had in the said suit between John N. Peysen, plaintiff, *vs.* The District Court of Plymouth County, Iowa, defendant, on a writ of certiorari from the supreme court of Iowa to the district court of Plymouth county, in the State of Iowa, wherein was drawn in question the validity of a statute of the State of Iowa on the ground of its being repugnant to the Constitution and laws of the United States and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said —— ——, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings

aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday in October next, being the present seat of the National Government, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witnesseth the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, at Washington aforesaid, this — day of ——, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth year.

[Seal Circuit Court U. S., Northern District of Iowa, Sioux City.]

A. J. VAN DUZEE,
Clerk U. S. C. Court, Northern Dist. Iowa.
By J. H. BOLTON, *D'p'ty.*

Allowed.
AUSTIN ADAMS,
Chief Justice of the Supreme Court of Iowa.

142 We, the undersigned, John N. Peysen, principal, and M. D. Neisius, John Neisius, & Michael Neisius, sureties, are held and firmly bound unto the State of Iowa in the penal sum of one thousand dollars, well and truly to be paid unto the said State of Iowa, upon the conditions as follows:

Whereas the said John N. Peysen has sued out a writ of error and appealed from the order and judgment of the supreme court of the State of Iowa to the Supreme Court of the United States of America, rendered on the 19th day of June, 1866, in a proceeding where- the said John N. Peysen was plaintiff and The District Court of Plymouth County, Iowa, was defendant, in which the plaintiff in error herein was charged with having violated a certain writ of injunction, and had been convicted thereof in the district court of said Plymouth county, Iowa, and by it sentenced to pay a fine of five hundred dollars, and if not paid within thirty days to be confined in the county jail of said Plymouth county for the period of three months, and that the said John N. Peysen sued out a writ of certiorari before the supreme court of the State of Iowa, and upon the hearing thereof before said supreme court the judgment of the district court below was affirmed:

Now, if the said John N. Peysen will prosecute his appeal and writ of error and will pay said fine adjudged against him, or so much of the same as the Supreme Court of the United States may direct, and in all respects abide the orders and perform the judgment of the said Supreme Court upon said appeal and writ of error and faithfully abide by the orders of said Supreme Court and pay and perform the judgment of the supreme court of the State of Iowa in case the same shall be affirmed, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands this 30th day of June, 1886.

J. N. PEYSEN, *Principal.*
M. D. NEISIUS,
MICHAEL NEISIUS,
JOHN NEISIUS, *Sureties.*

STATE OF IOWA, } ss:
Plymouth County, }

I, M. D. Neisius, John Neisius, & Michael Neisius, each being duly sworn, on oath depose and say and each for himself says that he — a freeholder of the State of Iowa and has property in the State worth two thousand dollars and property liable to execution in this State equal to the sum of one thousand dollars, over and above all my debts & liabilities and incumbrances thereon.

M. D. NEISIUS.
JOHN NEISIUS.
MICHAEL NEISIUS.

Notarial Seal Charles F. Schmidt, Attorney-at-Law, Iowa.

Subscribed and sworn to before me and in my presence by the said M. D. Neisius, John Neisius, & Michael Neisius this 30th day of June, 1886.

CHARLES F. SCHMIDT,
Notary Public.

Approved July 10, 1886.
AUSTIN ADAMS,
Ch. Justice of Supreme Court.

STATE OF IOWA, } ss:
Plymouth County, }

I, W. S. Welliver, clerk of the district court of Plymouth county, Iowa, do hereby certify that the sureties named in the annexed bond, M. D. Neisius, Michael Neisius, and John Neisius, are amply good and sufficient for the penalty therein stated, and I would approve said bond if the same was presented to me for approval.

Seal of the District Court, Plymouth Co., Iowa.

Witness my hand and seal of said dist. court, affixed at Le Mars, Iowa, this 2d day of July, A. D. 1886.

W. S. WELLIVER, *Clerk.*

[Endorsed:] John N. Peysen *vs.* The Dist. C't of Plymouth Co., Iowa.

143 [Endorsed:] John N. Peysen, plaintiff in error, *vs.* The District Court of Plymouth County, Iowa, defendant in error. Filed Sep. 3, 1886. G. B. Pray, clerk sup. court. 12128.

144 [Endorsed:] (6.) Pet., writ, etc. John N. Peysen case.

Endorsed on cover: Iowa supreme court. No. 375. Eugene Eilenbecker, John Manderscheid, John Manderscheid, Henry Brauch, J. B. Greenen, and John N. Peysen, plaintiffs in error, *vs.* The District Court of Plymouth County, Iowa. Filed October 1, 1886.

Office Supreme Court U. S.
FILED.
NOV 26 1889
JAMES H. McKENNEY,
CLERK.

Brief and Argument of Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1889.

EUGENE EILENBECKER, JOHN MANDERSCHIED, JOHN MANDERSCHEID, HENRY BRAUCH, J. B. GREENEN, AND JOHN N. PEYSEN, PLAINTIFFS IN ERROR,

vs.

THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGO & McDUFFIE AND WILLIAM A. McKENNEY,
Attorneys for Plaintiffs in Error.

STRUBLE, RISHEL & HART, S. M. MARSH AND A. J. BAKER, *Attorney General of Iowa*,
Attorneys for Defendant in Error.

OWA.

Brief and Argument of Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1889.

EUGENE EILENBECKER, JOHN MANDERSCHIED, JOHN MANDERSCHEID, HENRY BRAUCH, J. B. GREENEN, AND JOHN N. PEYSEN, PLAINTIFFS IN ERROR,

vs.

THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGO & MCDUFFIE AND WILLIAM A. MCKENNEY,
Attorneys for Plaintiffs in Error.

STRUBLE, RISHEL & HART, S. M. MARSH AND A. J. BAKER, *Attorney General of Iowa*,
Attorneys for Defendant in Error.

STATEMENT OF THE CASE.

On the 11th day of June, 1885, seperate petitions in equity were filed in the District Court of Plymouth County, Iowa, against each of these plaintiffs in error, asking that they be enjoined from selling or keeping for sale any kind of intoxicating liquors; including ale, wine and beer, in Plymouth County, Iowa. On the 6th day of July, 1885, the court ordered the issuance of Writs of Injunction as prayed, and on the 7th day of July, the writs were served on each of the plaintiff's in error, by the Sheriff of Plymouth County, Iowa. That on the 24th day of October, 1885, affidavits and complaints were filed alleging that these plaintiffs in error, had been engaged in selling intoxicating liquors in violotion of law and the terms of the Writs of Injunction served on them, and asking they be required to show cause why they should not be punished for contempt of court, a rule was granted as prayed, and the court having no personal knowledge of the facts charged, ordered that a hearing be had at the next term of said District Court upon affidavits, that on the 8th day of March, 1886, it being at the regular term of the District Court of Plymouth County, Iowa, seperate trials were had upon evidence in the form of affidavits to the court, without a jury, upon which the court found the plaintiffs herein guilty and that they had violated the Writs of Injunction issued in said cause. and ordered that each of these plaintiffs in error pay a fine of five hundred dollars and costs, and that they each be imprisoned in the jail of Plymouth County for the period of three months, to be released from confinement if the fine imposed on them be paid within 30 days from the day of judgment.

That under the laws of Iowa, there being no appeal, on the 17th day of March, 1886, each of these plaintiffs in error, filed in the Supreme Court of Iowa, his petition for a Writ of Certiorari, in which it is alleged that the District Court of Plymouth County, exceeding its jurisdiction, acting illegally, and irroneously, and among other things, committed the following errors:

2nd. In receiving in evidence ex parte affidavits and incompetent evidence, and in finding him guilty on incompetent evidence.

3rd. In finding your petitioner guilty of contempt of violating an injunction, without proof of any order for the issuance of an injunction having been made.

4th. In punishing him for contempt without entering upon

the records the evidence upon which the court acted, or the facts constituting the alleged contempt as required by law.

5th. In ordering him imprisoned in case of non-payment of fine without specifying the number of days of imprisonment.

6th. In punishing your petitioners without a trial by jury and without due process of law, and in violation of sections 9, 10 and 11, of article 1, of the Constitution of the State of Iowa, and articles 5 and 6 amendments to the Constitution of the United States.

7th. In trying your petitioners in a case involving his liberty on ex parte affidavits and denying him the right to be confronted with the witnesses against him, and in violation of section 10 aforesaid of said constitution.

8th. In trying him for an offense involving punishment by fine exceeding $100.00, and imprisonment for 30 days without indictment by grand jury, in violation of section 11, article 1, of said Constitution, and in violation of article XIV of the Constitution of the United States.

9th. In inflicting excessive fine, cruel and unusual punishment in violation of section 17, of article 1, of the Constitution of Iowa, and article 8 of the of the amendments to the Constitution of the United States.

The Supreme Court of Iowa granted the Writs of Certiorari and on the 23rd day of March, 1886, the same were duly served and returned.

By agreement of counsel and consent of the court, the six cases were submitted together and tried on one Transcript of Record.

That on the 23d day of June, 1886, the Supreme Court of Iowa, decided said causes by affirming the Judgment of the District Court of Plymouth County.

That on the 26th day of June, 1886, a Writ of Error was sued out by plaintiffs in error and these cases were in due time filed and entered in this most honorable court, and now awaits its final judgment.

ERRORS ASSIGNED.

I.

The Supreme Court of Iowa erred in not holding that Section 12, of Chapter 143, of the acts of the 20 General Assembly of Iowa, is

void and in conflict with section 2, of article 3, of the Constitution of the United States which provides that "The trial of all crimes, except in cases of impeachment, shall be by jury." Also in conflict with and contrary to the provisions of article 6, of the amendments to the Constitution of the United States, which provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury." The court also erred in affirming the court below in imposing a fine and imprisonment on plaintiffs in error without the benefit of a jury trial.

II.

The Supreme Court of Iowa erred in affirming the District Court of Plymouth County, in holding that plaintiffs in error could be fined and imprisoned without being first presented by indictment by a grand jury, and in being tried on ex parte affidavits, which decision of both District Court and Supreme Court of Iowa is in conflict with, and contrary to the provisions of both articles, five and six of the amendments to the Constitution of the United States, which provides that "In all criminal prosecutions the accused shall be confronted by the witnesses against him."

III.

The Supreme Court of Iowa erred in not holding that Chapter 143 of the acts of the 20 General Assembly of Iowa, and especially Section 12 of said Chapter, is void and in conflict with Section 1 of Article 14 of the amendments of the Constitution of the United States. In this it deprives persons charged with selling intoxicating liquors the equal protection of the law. It abridges the rights and privileges of that particular class of persons and denies to them the right of trial by jury, while in all other criminal prosecutions the accused must first be presented by indictment and then have the benefit of trial by a jury of his peers.

IV

The Supreme court of Iowa erred in not holding that section 12 of Chapter 143 of the Acts of the 20th General Assembly of Iowa, is contrary to and in conflict with artictle 8th of the Amendments to the Constitution of the United States, which provides that "Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted." Said section 12 complained of, for the sale of one glass of beer after injunction has issued, imposes a fine of not less than five hundred dollars and as high as one thousand dollars and also

imprisonment six months, if the court so directs. In all other cases of contempt in Iowa, the law will not permit the court to impose a fine of not more than fifty dollars.

ARGUMENT.

For the convenience of the court, and in order that our argument may be simplified and the better understood, we here set forth *verbatim*, the important and material parts of Chapter 143 or the Acts of the 20th General Assembly of Iowa.

SEC. 8. "Any person having such permit, who shall sell intoxi-"cating liquors at a greater profit than is herein allowed, shall be "liable to treble damages, to be recovered by civil action, in favor of "the party injured. And any person holding a permit, either to "manufacture or sell, who shall fail to make monthly returns, as here-"in required, or within five days thereafter, or who shall make a "false return, shall forfeit for each offense the sum of one hundred "dollars, to be recovered in the name of the state of Iowa, upon the "relation of any citizen of the county, by civil action on his bond, "with costs; and one-half of the sum recovered shall go to the in-"former and one-half shall go to the school fund of the county.

SEC. 10. "If any person not holding such a permit, by himself, "his clerk, servant or agent, shall for himself, or any person else, di-"rectly or indirectly, or on any pretense, or by any device, sell or in "consideration of the purchase of any other property, give to any "person any intoxicating liquors, he shall, for the first offense, be "deemed guilty of a misdemeanor, and on conviction for said first "offense, shall pay a fine of not less than fifty or not more than one "hundred dollars and costs of prosecution, and stand committed to "the county jail until such fine and costs are paid; for the second "and every subsequent offense, he shall pay on conviction thereof, a "fine of not less than three hundred dollars nor more than five hun-"dred dollars and costs of prosecution, and be imprisoned in the "county jail not to exceed six months. All clerks, servants, and "agents of whatever kind, engaged or employed in the manufacture, "sale or keeping for sale, in violation of this chapter, of any intoxi-"cating liquor, shall be charged and convicted in the same manner as "principals may be, and shall be subjected to the penalties herein "provided. Indictments and informations for violations under this "section, may allege any number of violations of its provisions by "the same party, but the various allegations must be contained in "separate counts, and the person so charged, may be convicted and

"punished for each of the violations so alleged as on separate indict-
"ments or informations, but a separate judgment must be entered on
"each count on which a verdict of guilty is rendered. The second
"and subsequent convictions mentioned in this section, shall be con-
"strued to mean convictions on separate indictments or informations;
"and in default of the payment of the fines and costs provided for
"the first conviction under this section. The person so convicted
"shall not be entitled to the benefit of chapter forty-seven title
"twenty-five of this code, until he shall have been imprisoned sixty
"days.

SEC. 11. "No person shall own or keep or be in any way con-
"cerned, engaged or employed in owning or keeping any intoxicating
"liquors with intent to sell the same within this state, or to permit
"the same to be sold therein in violation of the provisions hereof,
"and any person who shall so own or keep or be concerned, engaged
"or employed in owning or keeping such liquors with any such in-
"tent, shall be deemed, for the first offense, guilty of a misdemeanor,
"and on conviction for said first offense shall pay a fine of not less
"than fifty and not more than one hundred dollars and costs of prose-
"cution, and shall stand committed to the county jail until such fine
"and costs are paid, and in default of such fine and costs, he shall
"not be entitled to the benefits of chapter forty-seven, title twenty-
"five of the Code, until he shall have been imprisoned sixty days;
"for the second and every subseqent offense he shall pay a fine of not
"less than three-hundred dollars nor more than five-hundred, or be
"imprisoned in the county jail not more than six months, or by both
"such fine and imprisonment, in the discretion of the court, and
"upon trial of every indictment or informations of violations of the
"provisions of this section, proof of the finding of the liquor named
"in the indictment or in the information, in the possession of the
"accused in any place except his private dwelling house, or its de-
"pendencies, or in such dwelling house or dependencies, if the same
"is a tavern, public eating house, grocery or other place of public re-
"sort, or in unusual quantities in the private dwelling house or its
"dependencies of any person keeping a tavern, public eating house,
"grocery or other place of public resort in some other place, shall be
"received and acted upon by the court as presumptive evidence that
"such liquor was kept or held for sale contrary to the provisions
"thereof."

SEC. 12. "That section 1543 of the code, be and the same is

"hereby repealed and the following enacted in lieu thereof:

"Sec. 1543. In case of violation of the provisions of either of "the three preceding sections or of section fifteen hundred and "twenty-five of this chapter, the building or erection of whatever "kind, or the ground itself in or upon which such unlawful manu- "facture or sale, or keeping with intent to sell, use or give away, of "any intoxicating liquors, is carried on or continued or exists, and "the furniture, fixture, vessels, and contents, is hereby declared a "nuisance, and shall be abated as hereinafter provided, and whoever "shall erect or establish, or continue, or use any building, erection or "place for any of the purposes prohibited in said sections, shall be "deemed guilty of a nuisance, and may be prosecuted and punished "accordingly, and upon conviction, shall pay a fine of not exceeding "one thousand dollars and costs of prosecution, and stand committed "until the fine and costs are paid; and the provisions of chapter 47, "title 25 of this Code, shall not be applicable to persons committed "under this section. Any citizen of the county where such nuisance "exists, or is kept or maintained, may maintain an action in equity, "to abate and perpetually enjoin the same, and any person violating "the terms of any injunction granted in such proceeding shall be "punished as for contempt, by fine of not less than five hundred nor "more than one thousand dollars or by imprisonment in the county "jail not more than six months, or by both such fine and imprison- "ment in the discretion of the court."

From the above it must be conceded that the legislature of Iowa has made the sale, or the keeping with intent to sell as a beverage any kind of intoxicating liquors, a crime. The plaintiffs in error are charged with the crime of keeping with intent to sell, and selling intoxicating liquorscontrary to law; therefore, under the provisions of the Constitution of the United States were entitled to a trial by jury.

That part of section 12 of chapter 143 of the 20th General Assembly which provides a penalty for a violation of the injunction created by said section, reads as follows: "Any citizen of the county "where such nuisance exists, or is kept, or maintained, may maintain "an action in equity to abate and perpetually enjoin the same; and "any person violating the terms of any injunction granted in such "proceedings, shall be punished as for contempt by a fine of not less "than five hundred dollars nor more than one thousand dollars or by "imprisonment in the county jail not more than six months or by

"both fine and imprisonment in the discretion of the court."

The most favorable view that can be claimed by counsel is that by this act the legislature has created a new statutory crime heretofore unknown to the laws of our state, a crime with a penalty affixed that requires the intervention of a grand jury and a trial by a petit jury before the defendant can be punished.

"The criminal law whether common or statue is imperative "with reference to the conduct of individuals, so that, if a statue for- "bids or commands a thing to be done, all acts or omissions contrary "to the prohibition or command of the statue are offenses at common "law and ordinarly indictable as such Bour Dict. 2nd Vol. 412."

The word "As for contempt" are redundant and surplusage, and have no place whatever in that section. If intended as the name for this new statutory crime, it is a misnomer and carries no more force than if the legislature had said the defendant should be punished as "For a burglary," or as for "A larceny."

A crime is defined by Bouvier to be "An act committed or "omitted in violation of a public law forbidding or commanding it." And criminal is defined by the same author to be "That branch of jurisprudence with treats of crimes and offences."

It is reasonable to say that it was the intention of the legislature to create a new crime, and in christening it gave it a very inappropriate name. However, the giving a thing a wrong name does not change its nature, as the Supreme Court of Iowa aptly says in ex parte Grace 12th Iowa 214. "Again it is suggested that this right "applies to suits at law. This is true; but the legislature can by no "evasion of the Constitution make that a proceeding to punish for a "contempt which in its essence is a suit at law. That is to say if "the party is secured by the Constitution a jury trial in all cases in- "volving his liberty; and if he is guaranteed due process of law be- "fore he can be deprived of his liberty; and if it be true at the same "time that these provisions have reference to suits at law, it would "by no means follow that these safeguards could be frittered away "and broken down by styling every proceeding to punish for dis- "obedience of the order of a court or judge, a proceeding to punish "for contempt, or something else, instead of a suit, an action or a "trial."

"By due process of law is meant no less than a prosecution or "suit instituted and conducted according to the prescribed forms and

"solemnities for ascertaining guilt, or determining the title of property "then the *legislature cannot under the guise of punishing a party "for contempt*, provide for condemning without hearing, for render- "ing judgment without injuiry, nor without such hearing and in- "quiry as he should have by due process of law. Another exposition "of due process of law is the right of trial according to the process "and proceedings of the common law, or law in its regular course of "administration through courts of justice."

"Our goverments, state and federal, are governments of checks "and balances in a much larger sense than the goverment of Great "Britain can be said to be a government of checks and balances. The "*judiciary* in this country *exercises a check upon legislative* power "by declaring the legislative acts to be *void* when they are in *con- "travention* of the *written constitution* which power is not possessed "by the judiciary of Great Britian." [Vol. 5, crim. law Mag. 153.]

It is well settled by the Supreme Court of Iowa that the sale of intoxicating liquors is a crime, and that the violation of the injunction by the defendant consists in his selling intoxicating liquors contrary to law, and by the act of selling a crime is committed. That selling intoxicating liquors by a defendant after he has been served with a writ of injunction is recognised by the Supreme Court of Iowa in Littleton vs Fritz and also in Martin vs Blattner, it being a crime to violate the writ of injunction and the penalty being more than one hundred dollars, it was the duty of the court to order that these cases be sent before the grand jury of the county for their consideration. It has been frequently held by appellate courts that the verdict of the jury would not be set aside because the jury intended their verdict should have a different effect than the one expressed in the verdict, and surely in this case the court will not find that the legislature intended to override the provisions of the constitution simply because they gave the crime in question an inappropriate name.

The Supreme Court of Iowa was not called upon to decide and it did not decide the question presented to it either in the case of Littleton vs Fritz or Martin vs Blattner. The question in each of those cases was whether a writ of injunction could be legally issued. Those cases were in equity, while these are cases at law if properly entitled, as they should be, the State of Iowa vs the defendant, instead of being as they now are. The court in the case of the First

Congregational Church of Bloomington vs the city of Muscatine, 2nd. Iowa, page 69, Cole' edition, on page 71, the court, in speaking of contempt proceedings, say that "The proceeding in its nature is criminal, and to a great extent is independent of the original proceeding." And near the bottom of page 70 the court uses the following significant language: "But we are told that our constitutian "provides that the supreme court shall have appelate jurisdiction "only in all cases of chancery and therefore an appeal must lie or "no remedy exists." If a proceeding to enforce a penalty for disobedience to the process of injunction is a chancery suit, or necessarily a part of a chancery suit, this is true. But is it? *We think most clearly not.*

Whether or not the injunction has been violated is a question of fact, and should have been submitted to a jury for their determination. Not like an ordinary contempt proceeding, where the contempt consists in some overt act or misconduct of the party charged done in the presence of the court, no evidence being required to inform the court in reference thereto. In the cases now before your honors, the parties charged with being in contempt deny the charge. It then becomes a question of fact whether the injunction has been violated or not. This question ought to have been submitted to a jury.

Until the passage of the present prohibitory law—Chapter 143 Acts of 20th General Assembly—punishment for contempts were subject to the discretion of the court as to amount, but could in no event exceed the sum of $50, and imprisonment for one day. Sec. 3493.

The character of the offense, the magnitude of the contempt determined the extent of the punishment.

We do not deny the right to punish a contempt without a trial by jury. Such has been the due process of the law from time immemorial.

What we do deny is, the power of the legislature to punish crime under the guise or pretense of punishing a contempt; to declare that the violation of an injunction against one kind of a nuisance shall be punished by an absolute fine of $500, or six months' imprisonment while all others shall be limited to a fine of $50, when there is no pretense that the injury from one violation is in all cases greater than from the others; to depart from the universal rule that a public

nuisance is not subject to injunction except in case of special injury to the plaintiff, and to do these things to the end and for the express purpose of depriving the accused of a trial upon indictment by jury.

It is useless to attempt to disguise or deny the fact that this is the purpose of the law. A sufficiently severe law had for years been on the criminal statute book.

In some places the judiciary was not sufficiently in accord with the law, on account of its beer and wine prohibition, to inflict such punishment as would prohibit. There are numerous crimes under our statute which are continually committed with impunity all over the state because the sentiment of the people does not demand their punishment, notably are those in relation to game, fish, obscene prints the deposit of filth in streams, etc.

Now, in order to evade the constitutional requirement of indictment by jury trial and judicial discretion in all cases in which the punishment exceeds $100, a safeguard which the people have not yet concluded to dispense with in any other case, this law was enacted.

It may be conceded, that the evil sought to be reached is great, but it is no greater than it has been for twenty years past, if indeed it is so great.

Former laws have always been sufficient for its suppression whenever any considerable number of inhabitants desired it, either by prosecution before justices for sales, or by indictment as a nuisance.

Call it what we may, this law is intended to punish crime, and not simply to enforce private rights, and it does so, without indictment, trial by jury, or judicial discretion as to punishment- and hence, without due process of law.

This is in plain violation of Section 10, Article 1, of the State constitution, and Section 1, Article XIV, of the Federal constitution, and is similar to the evasion condemned in "Ex parte Grace.."

The Federal constitution restricts the power of the state in depriving the citizen of liberty, to "due process of law."

If this law were directed against unlawful fishing in the DesMoines river, it is hardly possible that any court would hesitate to declare it invalid. If it is to be upheld, simply because the evil is great against which it is directed, then, a similar one may be enacted against any crime, and must likewise be upheld, for the lesser character of the evil cannot be a legal reason for discrimination.

It is such a radical departure from all former precedents, that no

one will deny that it opens a door that leads to an unknown field, not limited at all by the question of intoxicating liquor.

Cases like that of Dartmouth College, decided under great pressure, have kept the courts busy ever since endeavoring to escape from their legitimate consequences.

It is a serious question now presented to this court for the first time —whether it can afford to establish this precedent, because of the exigencies of the movement to suppress the liquor traffic, and thereby declare that special legislation may transform crimes into contempts.

THE PUNISHMENT EXCESSIVE, CRUEL AND UNUSUAL.

The case of Littleton vs. Fritz, 23 N. W. Rep., 641, does not decide the question here presented. The question there presented and decided is, that the mere fact that a nuisance is a crime, does not prevent courts of equity from proceeding to restrain it, and that the rights of a trial by jury to determine the issues in an equity case, had never existed at common law. This doctrine, as is there said, has always been held applicable to highway obstructions, etc., but it has never before been attempted to fix a prescribed and excessive punishment for any violation, no matter how slight.

Under the law in question, a person prosecuted by indictment, may be punished by fine from $1.00 to $1,000, but, if he violates an injunction issued under the same chapter, his punishment cannot be less than $500, and may be $1,000, with six months imprisonment, and this minimum of $500 must bind the court although the accused may have sold but a single glass of wine or had merely kept it for sale but never sold a drop —this is surely "excessive fine and cruel and unusual" punishment, and prohibited by section 1, article 1, of the state constitution, [also, article 8 of amendments to the constitution of the United States.]

If the legislature should enact a law punishing a person for having a fish-net or having caught a single fish, by a fine of $500, would any court hesitate for a moment to hold it to be both excessive and unusual?

In the Littleton case, the right to issue a temporary injunction is supported because of the irreparable injury which the keeper of a saloon might inflict before final decree. This may be conceded as a as a proper ground for preverting a probable result, but the right of injunction under this law exists against the druggist as well as against the open saloon, and the injunction is violated by a single sale as a beverage, by a druggist, with or without a permit, as much as by the open and wilful sales in a saloon, and the punishment in either case cannot be less than $500, no matter what element of mitigation might appear in the case of the druggist.

This law must then be judged not as only applicable to the saloon, but as also applicable to the entire field of violations which may arise.

If this was a case in which a respectable druggist, who, forgetting that his permit had expired, had kept his drug store open for one day after such expiration had sold a little brandy or wine in a case involving a human life, he must nevertheless be fined $500 in what is known as a court of equity.

If such was this case, every court before which it came, would feel bound to search for reasons to escape from inflicting such punishment, and would feel that the name of equity was disgraced should it fail to find a way of escape.

And we think none of the courts of this state would hesitate to hold the law an unconstitutional attempt to punish crime under the guise of equity, and refuse to surrender its equitable powers for such a purpose.

Hence, this law must be judged, not by the question of justice or injustice involved in these cases alone, but by what it will do when administered in all the cases to which it is applicable, and the way its penalties must be inflicted without regard to equitable principles.

While it may be that some people regard the sale of a glass of wine as a hideous act we must not forget that others and the great majority of the people regard it otherwise, and not only so, but are in the habit of using the article daily in their households, and may lawfully do so, the essence of the crime under the law being not the possession or use of the thing or the fact of sale, but that it is kept for sale or sold without a permit, there being in the eye of this law $500 difference in the two acts, and yet it is claimed that this fine distinction is neither "excessive, cruel nor unusual." No parallel can be found in the history of the law.

If this law prescribed no minimum punishment, but left it to the court upon the proof to fix it according to the acts constituting the contempt, it might with some reason be claimed that was not obnoxious to the Constitution, in that it left to a court of equity the power to do equity according to the nature of the case. But the equity powers of the court are here bound by an iron rule and thus made a court of law—a criminal court contrary to all recognized rules of equity and contrary to the fundamental principle on which these courts are founded.

We have examined with all the care which the time allotted per-

mits, the criminal statutes of the state, and among 100 or so crimes therein created we have found none but felonies wherein the minimum punishment is equal to that here denounced against the violation of these injunctions by selling a glass of wine without permission of the board or supervisors. In every case of misdemeanor found in our statutes (unless we have overlooked some and we do not think we have) the minimum fine is either not fixed at all or is far below that provided for the slightest violation of these injunctions, and in but few cases is the maximum equal to that here. So that we have here a so-called contempt occupying a plane of criminality between the misdemeanors and felonies of our former laws.

If it can be sustained in its present penalties, it can and must be sustained if the punishment shall be hereafter changed to imprisonment in the penitentiary.

The question of *punishment* under the contempt feature of this law was not in the *Littleton case*, nor was it there decided.

Another potent argument against the validity of the contempt punishment provided by this law is found in the fact that the criminal punishment against this same act under the same law is less both in its minimum and maximum than for the contempt. And this is what is called equitable jurisdiction!

It was not intended by the Constitution to leave to the legislature the question as to whether the punishment was excessive, cruel or unusual. This is a limitation on its power, and the question is one for the courts.

It has been suggested, and perhaps on reasonable ground, that inasmuch as contempts were indictable at common law, and as Sec. 3500 seems to authorize indictment for contempts, this law remits the question of punishment in case of contempt to the criminal courts. If this be so, the statute may be enforced in harmony with the Constitutional rights of indictment and jury trial.

A penal statute of doubtful meaning ought always to be construed in favor of the liberty of the citizen rather than against it. Under our political system we ignore the "Divine right" of kings and the infallibility of parliament. The court alone is the final arbiter between the citizen and the state and the law its "golden met wand and measure."

We appeal to our courts to guard and protect the rights and liberties of the citizen under the Constitution.

A rapid advance in the progress of civilization is evinced by the Sixth and Fourteenth amendments to the Constitution. They open a new chapter in the Constitutional history of the United States; they are fresh covenants binding both the Federal and State governments and operating upon both the people and the state. They are new arrivals of principles comprehending all, operating upon all, and throwing around all the strong arm of its protection; in fine, it has arisen beyond the sublimity of Magna Charta. And while in the keeping of a patriotic judiciary who has wisdom enough "to pluck up the weeds that grow in the richest soils and among the brightest flowers." The Constitution will not suffer, but will survive the severest shock and remain for ages yet to come, the bulwark of the people's rights and the palladium of their liberties.

The Constitutional guaranty is of little worth if the legislature can enact a law depriving a citizen of the right of trial by jury by naming the offense a contempt of court when in fact it is a statutory crime same as any other crime made so by statute and thus under this guise and false name override the Constitution.

We invite the court's attention to following quotation from the argument of that great and upright lawyer and jurist, Jeremiah S. Black, before this honorable court at the December term, 1886, in defense of the right of trial by jury:

"If the men who fought out our Revolutionary contest when "they came to frame a government for themselves and their prosperity "had failed to insert a provision making the trial by jury perpetual "and universal, they would have covered themselves all over with "infamy as with a garment; for they would have proved themselves "basely recreant to the principles of that very liberty of which they "professed to be the special champions. But they were guilty of no "such treachery. They not only took care of the trial by jury, but "they regulated every step to be taken in a criminal trial. They "knew very well that no people could be free under a government "which had the power to punish without restraint. Hamilton ex-"pressed in the Federalist the universal sentiment of his time, when "he said that the arbitrary power of conviction and punishment for "pretended offenses has been the great engine of despotism in all "ages and all countries. The existence of such power is utterly in-"compatible with freedom. The difference between a master and his "slave consists only in this: That the master holds the lash in his "hands and he may use it without legal restraint, while the naked "back of the slave is bound to take whatever is laid on it.

"But our fathers were not absurd enough to put unlimited power "in the hands of the rulers and take away the protection of the law "from the rights of individuals. It was not thus that they meant to "'secure the blessings of liberty to themselves and their prosperity;'" "they determined that not one drop of the blood which had been shed "on the other side of the Atlantic, during seven centuries of contest "with arbitrary power, should sink into the ground, but the fruits of "every popular victory should be gathered up in this new govern- "ment. Of all the great rights already won, they threw not an atom "away. They went over Magna Charta, the Petition of Rights, the "Bills of Rights, and rules of the common law, and whatever was "found there to favor individual liberty they carefullly inserted in "their own system, improved by clearer expressions, strengthened by "heavier sanctions, and extended by a more universal application. "They put all these provisions in to the organic law, so that neither "tyranny in the executive, nor party rage in the legislature could "change them without destroying the government itself. Look for a "moment at the particulars and see how carefully every thing con- "nected with the administration of punctive justice is guarded.

1. "No expost facto law shall be passed. No man shall be an- "swerable criminally for any act which was not defined and made "punishable as a crime by some law in force at the time when the "act was done.

2. "For an act which is criminal he cannot be arrested without "a judicial warrant founded on proof of probable cause. He shall "not be kidnapped and shut up on the mere report of some base spy "who gathers the materials of a false accusation by crawling into his "house and listening at the key-hole of his chamber door.

3. "He shall not be compelled to testify against himself. He "may be examined before he is committed, and tell his own story if "he pleases; but the rack shall be put out of sight, and even his "conscience shall not be tortured; nor shall his unpublished papers "be used against him, as was done most wrongfully in the case of "Algernon Sydney.

4. "He shall be entitled to a speedy trial; not kept in prison "for an indefinite time without the opportunity of vindicating his "innocence.

5. "He shall be informed of the accusation, its nature and "grounds. The public accuser must put the charge in the form of a

"legal indictment, so that the party can meet it full in the face.

6. "Even to the indictment he need not answer unless a grand "jury, after hearing the evidence, shall say upon their oaths that they "believe it to be true.

7. "Then comes the trial, and it must be be before a regular "court of competent jurisdiction, ordained and established for the "state and district in which the crime was committed; and this shall "not be evaded by a legislative change after the crime is alleged to be "done.

8. "His guilt or innocence shall be determined by an impartial "jury. These English words are to be understood in their sense, and "they mean that the jurors shall be fairly selected by a sworn officer, "from among the peers of the party residing within the local juris-"diction of the court. When they are called into the box, he can "purge the panel of all dishonesty, prejudice, personal enmity and "ignorance, by a certain number of peremptory challenges and as "many more challenges as he can sustain by showing reasonable cause.

9. "The trial shall be public and open, that no underhand ad-"vantage may be taken. The party shall be confronted with the wit-"nesses against him, have compulsory process for his own witnesses, "and be entitled to the assistance of counsel in his defense.

10. "After the evidence is heard and discussed, unless the jury "shall, upon their oaths, unanimously agree to surrender him up "into the hands of the court as a guilty man, not a hair of his head "can be touched by way of punishment.

11. "After a verdict of guilty, he is still protected. No cruel "or unusual punishment shall be inflicted, nor any punishment at all, "except what is annexed by law to his offense. It cannot be doubted "for a moment that if a person, convicted of an offense not capital, "were to be hung on the order of a judge, such a judge would be "guilty of murder as plainly as if he should come down from the "bench, tuck up the sleeves of his gown, and let out the prisoners, "blood with his own hand.

"If I claimed this freedom under any kind of prescription, I "could prove a good long possession in ourselves and those under "whom we claim it. I might begin with Tacitus, and show how the "contest arose in the forests of Germany, more than two thousand "years ago; how the rough virtues and sound common sense of that

" people established the right of trial by jury, and thus started on a " career which has made their posterity the foremost race that ever " lived in all the tide of time. The Saxons carried it to England, " and were ever ready to defend it with their blood. It was crushed " out by the Danish invasion; and all that they suffered of tyranny " and oppression, during the period of their subjugation, resulted " from their want of trial of jury.

" I prove my right to trial by jury just as I would prove my " title to an estate if I held in my hand a solemn deed conveying it to " me, coupled with undeniable evidence of long and undisturbed pos- " session under and according to the deed. There is the charter by " which we claim to hold it. It is called the Constitution of the " United States. It is signed by the sacred name of George Wash- " ington and by thirty-nine other names, not less illustrious than his. " They represented every independent state then upon this continent, " and each state afterwards ratified their work by a separate conven- " tion of its own people. Every state that subsequently came ac- " knowledged that this was the great standard by which their rights " were to be measured. Every man that has ever held office in the " country from that time to this, has taken an oath that he would " support it through good report and through evil. The attorney- " general himself became a party to the instrument when he laid his " hand upon the Gospel of God and solemnly swore that he would give " to me and every other citizen the full benefit of all what it contains. " What does it contain? This among other things: The trial of all " crimes, except in cases of impeachment, shall be by jury. Again: " 'No person shall be held to answer for a capitol or otherwise in- " famous crime unless on a presentment or indictment of a grand " jury, except in cases arising in the land of naval forces, or in the " malitia when in actual service in time of war or public danger; nor " shall any person be subject for the same offense to be twice put in " jeopardy of life or limb, nor be deprived of life, liberty, or prop- "erty, without due process of law; nor shall private property be taken " for public use without just compensation.' This is not all. An- " other article declares that 'in all criminal prosecutions the accused " shall enjoy the right to a speedy and public trial by an impartial " jury of the state and district wherein the crime shall have been " committed, which district shall have been previously ascertained by " law. And to be informed of the nature and cause of the accusa- " sion; and to be confronted with the witnesses against him; to have

"compulsory process for the witnesses in his favor, and to have the "assistance of counsel in his defense.'

"Is there any ambiguity there? If that does not signify that a "jury trial shall be the exclusive and only means of ascertaining guilt "in criminal cases then I demand to know what words or what col- "lection of words in the English language would have that effect? "Does this mean that a fair, open, speedy, public trial by an impar- "tial jury shall be given only to those persons against whom no spec- "ial grudge is felt by the attorney-general, or the judge advocate, or "the head of a department? Shall this inestimable privilege be ex- "tended only to men the administration does not care to convict? Is "it confined to vulgar criminals, who commit ordinary crimes against "society, and shall it be denied to men who are accused of such "offenses as those for which Sydney and Russel were beheaded, and "Alice Lisle was hung, and Elizabeth Gaunt was burt alive, and John "Bunyon was imprisoned fourteen years, and Baxter was whipped at "the cart's tail, and Pronn had his ears cut off? No; the words of "the Constitution are all-embracing "as broad and general as the cas- "ing air."

The question presented in this case, has never as yet, been decided by this court. We therefore solicit the patient and careful consideration of the court, as, in our opinion, a great and important question and principle is involved in the final judgment and decision of this honorable court in these cases.

Respectfully submitted.

ARGO & MCDUFFIE AND WILLIAM A. MCKENNEY,

Attorneys for Plaintiffs in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

EUGENE EILENBECKER, JOHN MANDERSCHIED, HENRY BRANCH, J. B. GREENAN, and JOHN N. PEYSEN, Plaintiffs in Error,

vs.

THE DISTRICT COURT OF PLYMOUTH CO., IOWA, Defendant in Error.

Brief and Argument for Defendant in Error.

STRUBEL, RISHEL & HART,
S. M. MARSH,
A. J. BAKER, *Attorney General of Iowa*,
Attorneys for Defendant in Error.

ARGO & McDUFFIE,
WILLIAM A. McKENNEY,
Attorneys for Plaintiffs in Error.

IN THE

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vs.
THE DISTRICT COURT OF PLYMOUTH COUNTY, IOWA, *Defendant in Error.*

In Error to the Supreme Court of the State of Iowa.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

ARGUMENT.

I.

The proceedings in each of the cases presented for the consideration of this Court were exclusively those to punish plaintiffs in error for violation of injunction writs, restraining them from further keeping for sale, selling, or in any manner disposing of lager beer or any other kind of intoxicating liquors in buildings described in the writs.

The questions raised by the pleadings in the State Court have never been determined, although similar questions have been, and we contend that this Court has no jurisdic-

tion either of questions arising on the pleadings and sought to be adjudicated in the main actions, nor in the special proceedings on which the plaintiffs in error were, by the District Court of Plymouth County, Iowa, found guilty of contempt.

The authority to deal with an offender in a matter of contempt belongs exclusively to the Court in which the offense was committed, and no other Court, not even the highest, can interfere with its exercise.

Williamson's case, 26th Pa. St., 967. 67 Am. Dec. 376–380.
Ex Parte, Summers, 5th Ired., 151–152.
In Re Ferdinandez, 10th Com. B. N. S., 26.

No court can punish a contempt of another court.

Rapalje on Contempts, p. 15, sec. 13.
4 Peters, 108.

"And in any case, whether a contempt of Court has been committed and how it shall be treated are questions for the discretion and judgment of that Court, and its decision will be interfered with only when there is a most flagrant abuse of discretion."

Rapalje, p. 11, sec. 9.
Cabot *vs.* Yarborough, 27 Ga., 476.

II.

Power of Courts of Equity in Contempt Cases.

"There is no distinction in respect to the inherent right to punish for contempt between courts of law and courts of equity. The latter possess it as fully as the former."

Rapalje on Contempt, sec. 3, p. 4.

The power to punish for contempt is not limited to courts

of law. It may be exercised in proper cases by courts of equity.

Ex parte Hamilton, 51 Ala., 68.
Chaffee *vs.* Quidmick Co., 13 R. I., 443–'4.
Ex parte Walker, 25 Ala., 100.
Miekler *vs.* Silva, 70 Ga., 717.
Goodwille *vs.* Millimarm, 56 Ill., 525.
State *vs.* Matthews, 37 N. H., 453.
Mariner *vs.* Dyer, 2 Me., 169.

III.

This Court has no jurisdiction of any question sought to be presented in the causes as combined, because the proceedings in the State court were in the form of certiorari, in which it was alleged that the district court of Plymouth County, Iowa, "exceeded its jurisdiction, and acted illegally and erroneously."

See Petitions for Certiorari, Transcript of Record, pp. 1, 31, 65, 69, 73, 77.

The office of this writ in the State court was to bring the record of the proceedings of an inferior tribunal, to enable the Supreme Court of Iowa to review and determine whether the former proceeded within its jurisdiction, and not to correct mere errors in its proceedings.

People *vs.* Betts, 55 N. Y., 601–'2.
People *vs.* Highway Commissioners, 30 N. Y., 74.
People *vs.* Rochester, 21 Barb., 664.

Certiorari is not the appropriate remedy to review legislative acts.

Williams *vs.* Board of Supervisors, 2 West.
People *vs.* Supervisors, 25 Hun., 133.

The Court out of which the writ issues will only inquire into errors or defects which go to the jurisdiction of the

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People *vs.* Supervisors, 25 Hun., 133.

The Court out of which the writ issues will only inquire into errors or defects which go to the jurisdiction of the

court below, and to questions of law arising out of their proceedings. For all other errors or irregularities the party aggrieved must resort to his remedy by appeal or writ of error.

Hauser *vs.* State, 33 Wis., 680.
C. P. Ry. Co. *vs.* Placer Co., 46 Cal., 670.

The Supreme Court of Iowa, on hearing the questions presented to it, reviewed the cases and decided certain questions of practice having more or less relation to the jurisdiction of the lower court in rendering decisions fining and imprisoning the plaintiffs in error for violating the writs of injunction.

Manderscheid *vs.* The District Court of Plymouth Co., Iowa, 69 Iowa, 240–243.

It also decided that the plaintiffs in error were not entitled to a jury trial.

Now, after such review by the Supreme Court of Iowa of the proceedings of the lower court, and its approval of all that had been done, we respectfully submit the plaintiffs in error cannot, by writ of error in this Court, review the action of the State Court, and we now ask this Court to dismiss the cause at the costs of said plaintiffs.

The Supreme Court of Iowa reviewed and passed upon all questions of jurisdiction, construing some of the State statutes relating exclusively to State law and the practice thereunder and the Supreme Court of the United States, as we understand the rules laid down hitherto by it, will not attempt to interfere in such case.

The Supreme Court of the United States has decided that a proceeding in the Court below, for contempt of court, is not reviewable on appeal or writ of error.

Hayes *vs.* Fischer, 12th Otto, (U. S.), 121.
Ex parte Kearney, 7th Wheat., (U. S.), 38.
New Orleans *vs.* Steamship Co., 20th Wall., (U. S.) 387.

We also contend that, under sec. 709 of the U. S. Rev. Statutes, no jurisdiction attaches to this Court to hear any question sought by plaintiffs in error to be raised because, first, the judgment rendered by the Supreme Court of Iowa, is not such final judgment or decree as such section contemplates, and second, no treaty, U. S. statute, or constitutional provision, and no right, title, privilege or immunity guaranteed by the U. S. statute, or treaties, is in any way involved, or has been in the least transgressed and if not, then this Court cannot for a moment entertain jurisdiction, and we ask the Court to hold in conformity with this view.

IV.

Counsel for plaintiffs in error seek to have this Court hold that the Iowa prohibitory law set out in the transcript of record in this cause is unconstitutional in so far as it seeks to punish one found guilty of violating an injunction writ as did each of the plaintiffs in error on the theory that "the legislature has created a new statutory crime heretofore unknown to the laws of the State of Iowa, a crime with a penalty affixed that requires the intervention of a grand jury and a trial by a petit jury before the defendant can be punished." Page 8 of brief and argument of counsel for plaintiffs in error. And it is claimed (Id., p. 11) that so much of the law as permits courts to asssess fines to the extent of $500.00 and to imprison beyond thirty days is in violation of Sec. 10, Art. I of the constitution of Iowa, and also of Sec. 1, Art. 14 of the Federal Constitution.

It is well understood by every student of law who has investigated the history of State and Federal decisions, that the right and authority of a State to legislate in restriction or abolition of the sale and use of intoxicating liquors, is based on what is known and recognized as the police power of the States—the power to legislate for the protection of society and the individual, against certain evils, chief

among which we think may be classed the evils flowing from the vending and consumption of intoxicants—and to prescribe regulations to promote health, peace, morals, education and good order. That the Federal Supreme Court has repeatedly recognized this police power is most familiar to the lawyer, and indeed to the general public. The most noted and most applicable cases occurring to our minds are those of—

Mugler *vs.* State of Kansas, and
State of Kansas, *ex. rel.*, Tufts, Asst. Att'y Gen. *vs.* Ziebold, *et al.*, 8 S. C. Reporter, 273.

Every question attempted to be raised in this cause is fully covered and concluded by the decision above referred to as will be seen by reference thereto.

By reference to page 290 and 291, it will be noticed that certain of the counsel raised the precise questions sought by the opposing counsel to be raised in the case at bar, but the Court overruled them all and sustained the Kansas statute.

We maintain that an application of the points decided in this comprehensive and conclusive opinion to the questions sought to be raised in this cause will be as complete and effectual as in the Kansas cases.

But opposing counsel, while familiar with the extent to which this Court has gone in sustaining the police powers of a State, seek in this instance to raise a serious barrier against its exercise by the State of Iowa in the form of the familiar constitutional declarations requiring trial by jury in certain cases; that cruel and unusual punishment shall not be inflicted; that no person shall be held to answer for a capital or otherwise infamous crime without indictment. The decision in Mugler *vs.* State of Kansas, *supra*, covers these questions, we think, but a complete answer to each of the objections above stated is involved in the following propositions:

First, The prohibitions contained in the first twelve constitutional amendments were not designed as limits upon the State governments in reference to their citizens, but exclusively upon federal power.

Barron *vs.* The Mayor and City of Baltimore, 7 Peters, 247, &c.

Fox *vs.* Ohio, 5 Howard, 410.

Mechanic's and T. Bank *vs.* Thomas, 18th Howard, 384.

Twitchell *vs.* The Commonwealth, 7 Wall., 324, &c.

Presser *vs.* Illinois, 116 U. S., 252.

Second. The provision of the federal constitution which secures to every person when value exceeds $20, right of trial by jury, has no application to trials in State courts.

Edwards *vs.* Elliott, 21 Wall., 549–557.

Twitchell *vs.* Commonwealth, 7th Wall., 324, &c.

McLean *et al vs.* Leicht, 69 Iowa., 407–8.

Third. The question sought to be raised by opposing counsel, viz: that the decision of the Supreme Court of Iowa is in conflict with that part of Sec. 2, Art. 3 of the federal constitution embodied in these words: "The trial of all crimes except in cases of impeachment shall be by jury, also the question whether said decision is in conflict with so much of Art. 6 of same constitution as are expressed in these words: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," cannot be raised and decided in this court.

Barron *vs.* Mayor and City of Baltimore, 7th Peters 247, &c.

Twitchell *vs.* The Commonwealth, 7 Wall., 324, &c.

Edwards *vs.* Elliott, 21 Wall., 557.

Fourth. The 14th amendment of the U. S. Constitution is not designed to interfere with the power of the State—

sometimes called its police power—to prescribe regulations to promote health, peace, morals, education and good order of the people.

Barbier *vs.* Connolly, 113 U. S. Rept., 27.

Fifth. The power to punish for contempt is not in conflict with the provisions of the Constitution requiring the trial of crimes to be by jury.

United States *vs.* Duane, Wall. C. C., 102–106.
Ex Parte Hamilton, 51 Alabama, 68.
Little *vs.* State, 90 Ind., 338–340.

A consideration of the points, and the authorities sustaining them, made in the above five subdivisions and others may, among other results of more consequence, disparage somewhat the eloquent encomium pronounced by opposing counsel, (brief and argument, p. 15), upon "the advance in the progress of civilization (as) is evinced by the Sixth and Fourteenth Amendments to the Constitution, &c. &c." but there will result, it is hoped, a helpful and enlarged understanding and acquisition of legal information, which cannot but compensate for brilliant flights of eloquence having no foundation in accurate knowledge of the much lauded Constitutional proposition, and the numerous adjudications of the Supreme Court of the land, giving the ultimate construction of the amendments as applied to questions arising in the Courts of a State. It is better after all to be fairly well informed as to the correct interpretation of Constitutions, than simply to possess rhetorical ability to laud and magnify them.

V.

We deem further argument and citation of authorities superfluous, and yet it may be well to notice for a moment the point made by counsel for plaintiffs in error as to the alleged enormity of the amount of fine and imprisonment provided by chapter 143, laws of the 20th General Assem-

bly of the State of Iowa, for violating an injunction, the same being "not less than $500 nor more than $1,000, or by imprisonment in the County jail not more than six months, or by both such fines and imprisonment, in the discretion of the Court."

It is contended that such a statute is one providing excessive and unusual punishment, and counsel seek to make the most of their case at this point by reference to the "sale of a single glass of wine," as an act innocent in itself, and yet subjecting the person selling to the severe penalties above cited.

It will be remembered that the "single glass of wine" which in a given case brings upon the offender such grievous punishment, is not only one of a "continuing series," but that the vender, by every sale, commits a willful and defiant contempt of a court whose rightfully exercised authority should be at all times respected and obeyed.

The Supreme Court of Iowa in Jordon *vs.* The Circuit Court of Wapello County, 69th Iowa, p. 181 and 2, settled the question of the constitutionality of the law providing this punishment.

And in State *vs.* Ruff, 76 Iowa, p. 204, the same court held that a fine of $500.00 for violation of this law by a pharmacist was not excessive.

We conclude by respectfully requesting:

First, that this honorable Court will dismiss this cause for want of jurisdiction, and—

Second. If it should not be so dismissed, then that judgment be rendered affirming the action of the Supreme Court of Iowa.

Respectfully submitted,

STRUBLE, RISHEL & HART,
S. M. MARSH, and
A. J. BAKER, Attorney General
of Iowa,
Attorneys for Defendant in Error.

134 U.S.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1402.

THE McCORMICK HARVESTING MACHINE COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES W. WALTHERS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED OCTOBER 17, 1889.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, NOVEMBER 5, 1889.

1 Pleas before the Hon. Elmer S. Dundy, judge of the district court of the United States for the eighth circuit and district of Nebraska, sitting in the circuit court of the United States for the district of Nebraska, at the term of January, 1889.

Be it remembered that on the 21st day of July, 1887, a petition was filed in the office of the clerk of the circuit court of the United States for the district of Nebr.; which said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebr.

CHARLES W. WALTHERS, Plaintiff,
vs.
THE MCCORMICK HARVESTER MACHINE CO., Def't. } Petition.

Plaintiff complains and alleges—

I. That he is a citizen and resident of the State of Nebraska and that the defendant is a corporation duly incorporated and existing under the laws of the State of Illinois and is a citizen and resident of the State of Illinois, but having a local habitation and managing agent in Nebraska; that the matter in dispute in this action, exclusive of interest and costs, exceeds the sum and value of two thousand dollars.

II. That prior to the happening of the grievances hereinafter mentioned and for some years last past this plaintiff was engaged in business at Sutton, Nebraska, as retail dealer in farm implements, machinery, buggies, wagons, carriages, and by industry and fair and honest dealings had acquired a good reputation in his said business, and as such dealer had built up a large trade and was doing a large and lucrative business at Sutton aforesaid.

III. That on or about the 18th day of January, 1887, the defendant commenced two actions in this court against this
2 plaintiff as follows: One action (No. 332, Docket L) to recover the sum of one thousand three hundred and ninety-eight dollars and fifty-six cents ($1,398.56) and interest on account for money received by this plaintiff from the sale of merchandise belonging to the defendant, The McCormick Harvester Machine Company; the other being (No. 333, Docket L) for balance due upon two promissory notes, plaintiff claiming as such sum due in the aggregate for principal the sum of two thousand eight hundred and ninety-one dollars and fourteen cents ($2,891.14), together with interest.

IV. That for the purpose of injuring this plaintiff in his said business and of causing this plaintiff loss and damage therein and loss and damage to his reputation in said business said defendant, The McCormick Harvester Machine Company, caused its agent, R. Binford, falsely and maliciously and without probable or reasonable cause, to make an affidavit in said action (No. 332, Docket L), in due form of law, before R. S. Mockett, a notary public duly authorized

within and for the county of Lancaster, in the State of Nebraska, on the 18th day of January, 1887, for an attachment against the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of this plaintiff, in and by which said false and malicious affidavit the plaintiff, by its agent, R. Binford, falsely, maliciously, and without probable or reasonable cause, at the request, solicitation, and procurement of the defendant, alleged in said affidavit for attachment of and concerning this plaintiff as the ground for attachment of the property of this plaintiff in said action, and for the purpose of wrongfully procuring this plaintiff's property as aforesaid to be wrongfully attached in said action, that the debt and obligation for which said suit (No. 332, Docket L) of the McCormick Harvester Machine Company against Charles W. Walthers, this plaintiff, was brought was fraudulently con-
3 tracted, and by means of said false and malicious affidavit the defendant wrongfully procured an order of attachment to be issued out of this court, directed to the marshal of the district of Nebraska, commanding him to attach and safely keep the said property of this plaintiff.

V. This plaintiff further alleges that on the 17th day of January, 1887, the said defendant, The McCormick Harvester Machine Company, falsely, maliciously, and without probable or reasonable cause procured its agent, R. Binford, to make an affidavit in said action (No. 333, Docket L) for an attachment of the property of this plaintiff in said action, and said agent thereupon, in due form of law, duly made an affidavit before R. S. Mockett, a notary public, duly authorized, within and for the county of Lancaster, and State of Nebraska, for an attachment against the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of this plaintiff, in and by which said false and malicious affidavit the said R. Binford, at the request, solicitation, and procurement of said defendant, falsely, maliciously, and without probable cause alleged of and concerning this plaintiff that the said debt and obligation for which said suit (No. 333, Docket L) was brought was fraudulently contracted by this plaintiff; and by means of said false andmalicious affidavit the said defendant wrongfully procured an order of attachment to be issued out of this court directed to the marshal of the district of Nebraska commanding him to attach and safely keep the said property of this plaintiff.

That by virtue and in pursuance of said wrongful orders of attachment so wrongfully and maliciously procured by the defendant in said actions against this plaintiff (Nos. 332 & 333, Docket L), in this court as aforesaid, the said marshal of said district of Nebraska, on the 19th day of January, 1887, wrongfully levied upon and wrongfully took into his possession all this plaintiff's real estate and property and all of the goods, wares, and merchandise of this plaintiff in his said store and wrongfully put this plaintiff
4 out of possession of his said store and place of business and closed said place of business and locked the doors of this plaintiff's said place of business against him, and thereby wholly

deprived this plaintiff from conducting his said business for the space of — days.

VI. This plaintiff further alleges that on the 2nd day of February, 1887, this plaintiff filed a motion in this court in each of said actions (Nos. 332 & 333, Docket L) to dissolve the attachment in each of said actions on the ground that the affidavits on which said attachments were based were untrue, which said motion was supported by affidavits in behalf of this plaintiff, who was defendant in said actions.

That thereafter said court, after hearing said motions to dissolve said attachments and the evidence to sustain the said motions by the defendant herein, who was the plaintiff in said actions, and the evidence in support of said attachments—the court, upon consideration thereof, sustained said motion and dissolved said attachments and released the property and the whole thereof so wrongfully taken by virtue of said orders of attachment on the ground that said attachments were wrongfully procured.

VII. This plaintiff further alleges that said false and malicious allegations contained in said affidavits as aforesaid for said attachments were published in several public newspapers in the State of Nebraska by procurement of the defendant, and this plaintiff was injured by reason of the premises in his credit and reputation and loss — the following customers: Lininger, Metcalf & Co., Omaha; P. P. Mast & Co., Springfield, Ohio; Newton Wagon Co., Batavia, Ills.; Geo. W. Brown & Co., Galesburg, Ills.; Wm. Harrison, Grand Rapids, Michigan; P. Weghrich & Co., Pekin, Ills.; J. H. Thomas & Son, Springfield, Ohio; Peru City Plow Co., Peru, Ills.; Sioux City Plow Co., Sioux City, Ia.; Northwestern M'f'g Co., Stilliwater, Minn.; Hewitt, Sigafroos & Co., Fremont, Nebr.; Sandwich M'f'g Co., Sandwich, Ills., and incurred an expense of five hundred dollars ($500.00) in costs and counsel fees in defending himself against said attachment, and was prevented for — days from transacting his said business.

This plaintiff further avers that by reason of the said malicious filing of the said false affidavits as above stated and by reason of the malicious taking out of the said writs of attachment above named and by reason of the said wrongful and malicious seizure of the said goods of this plaintiff the said business, which he had then for many years carried on at Sutton, was wholly ruined and destroyed; that his place of business was closed up so that his customers and patrons could not longer be served by him thereat; that the other creditors of this plaintiff were thereby induced to press this plaintiff for the payment of their several claims or for the security therefor, and that thereby, by reason of the said wrongful and malicious proceedings and the wrongful and malicious abuse of the process of this court, this plaintiff was entirely driven out of the business and his means of livelihood and support thereby taken from him and all the property and means which he had were taken out of his possession and from under his control, so that he could not in any way carry on his business as a merchant, and that thereby his reputation and credit as a dealer with all persons of whom he had purchased goods and with all persons to whom he

sold goods was broken up and destroyed, to his injury and damage in the sum of $10,000.00.

Wherefore this plaintiff asks judgment against the defendant in the sum of $10,500.00 and the costs of this action.

HARWOOD, AMES & KELLY,
BARTLETT & CORNISH,
Att'ys for Plaintiff.

THE STATE OF NEBRASKA, } ss:
Lancaster County, }

Charles W. Walthers, being first duly sworn, on his oath says that he is the plaintiff in the above-entitled action. Affiant further says that he has heard read the foregoing petition and knows the contents thereof, and believes the facts stated therein to be true.

C. W. WALTHER.

Subscribed in my presence and sworn to before me this 16th day of July, A. D. 1887.

[SEAL.]

THEO. MILLER,
Notary Public.

Upon the back of said petition appear endorsements in words and figures following, to wit:

No. 51, M. Chas. W. Walther *vs.* The McCormick Harvester & Machine Co. Petition. I hereby agree to be held as security for costs in this case. A. O. Kendall. Security for costs approved and filed July 21, 1887. Elmer D. Frank, clerk. Harwood, Ames & Kelley, Bartlett & Cornish, attorneys.

Thereupon, afterwards, to wit, on the 3rd day of December, 1887, an answer was filed in said case which said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska

CHARLES W. WALTHER, Plaintiff,
vs.
THE MCCORMICK HARVESTING MACHINE CO., Defendant.

Answer.

Comes now the said defendant and, for answer to the plaintiff's petition herein filed, admits that it is a corporation duly incorporated and existing under the laws of the State of Illinois, and is a citizen and resident of the State of Illinois; and the said defendant further admits that it caused writs of attachment to be issued out of this said court in two civil cases in which this defendant was plaintiff and the plaintiff herein was defendant,
7 and caused the same to be levied upon said goods and chattels and lands and tenements of the defendant; and this defendant admits that said attachments were procured to be issued on the ground that the plaintiff herein, who was the defendant in said

actions, had fraudulently contracted the debts and incurred the obligations for which said suits were brought, but this defendant expressly denies that said suits were commenced or said attachments issued or the said affidavits for attachments made without probable cause or maliciously, but alleges the facts to be that theretofore the said defendant had, as the agent of this defendant, received large sums of money belonging to this defendant and had fraudulently converted the said money to his own use and benefit.

And this defendant further admits that thereafter, on the motion of the defendant therein, the plaintiff in this case, said attachments were by this said court dissolved; and this defendant, further answering, denies each and every allegation in said petition contained not herein expressly admitted or denied; and for a further defence this defendant alleges and says that prior to the issuing of the said attachments the plaintiff herein was the agent of this defendant at Sutton, Nebraska, for the sale of certain goods and merchandise, and as such agent he received large sums of money belonging to this defendant and fraudulently and corruptly converted the same to his own use, and thereby fraudulently contracted the debt and incurred the obligations upon which the said attachment suits were brought and upon which the said writs of attachment were sued out; and this defendant, further answering, alleges and says that before the commencement of the said actions it presented all the facts known to this defendant or its agents to Walter J. Lamb, Atnot C. Rocketts, and Henry H. Wilson, each of whom is an attorney-at-law in good standing at the bar and a member of the bar of this court, and upon this defend-
8 ant presenting the said matters and all facts by it or its agents known fairly, fully, and honestly to the said attorneys the said attorneys advised this defendant that, in their opinion, this defendant had good grounds upon which to issue an attachment in its said suits against the plaintiff herein, and this defendant brought the said suits and sued out the said writs of attachment under the advice and counsel of the said attorneys.

Set-Off and Counter-Claim.

First cause of action.—And the said defendant, for cause of action against the said plaintiff, alleges and says that during the May, 1887, term of said court this defendant did, on the — day of June, 1887, by the consideration and determination of this court, recover a judgment against the plaintiff herein for the sum of $957.93, with interest at ten per cent. per annum from the date thereof, and $28.00 costs of suit, said court having jurisdiction of the parties and subject-matter; that said judgment remains in full force and effect and is wholly unpaid, and there is now due thereon from the said plaintiff to this defendant the said sum of $957.93, with ten per cent. interest thereon from the said — day of June, 1887, and $28.00 costs of suit.

Second cause of action.—And this defendant, for a further and second cause of action against this plaintiff, alleges and says that at

the May, 1887, term of this said court, to wit, on the — day of June, 1887, this defendant did, by the consideration and determination of this court, recover a judgment against the said plaintiff in the sum of $3,894.01, with interest thereon from the said — day of June, and costs of suit taxed at $26.00, said court having jurisdiction of the parties and subject-matter; and this defendant says that said judgment is in full force and effect, and there is now due and owing thereon to this defendant from the said plaintiff the sum of $2,894.01 and ten per cent. interest thereon from the said — day of June, 1887, and costs, $26.00.

9 Wherefore this defendant prays judgment against said plaintiff for the said several sums above set forth and for interest and costs of suit.

LAMB, RICKETTS & WILSON,
Att'ys for Defendants.

STATE OF NEBRASKA, } ss:
Lancaster County, }

H. H. Wilson, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in this case; that he has read the foregoing answer, and that the matters and facts therein stated are true as he verily believes, and that the said defendant is a non-resident corporation.

H. H. WILSON.

Subscribed in my presence and sworn to before me this 2nd day of December, 1887.

——— ———,
Notary Public.

Upon the back of said answer appear endorsements in words and figures following, to wit:

No. 51, M. Charles W. Walther, plaintiff, *vs.* The McCormick Harvesting Machine Company, defendant. Answer, set-off, and counter-claim. Filed Dec. 3, 1887. Elmer D. Frank, clerk. Lamb, Ricketts & Wilson, att'ys for defendant. Leave is given to file out of time. Harwood, Ames and Kelly.

Thereupon, afterwards, to wit, at the January term of said court, on the 12th day of January, 1888, the following proceedings were had in said case, as appears of record on folio 610, Journal M of said court, to wit:

CHARLES W. WALTHERS }
vs. }
MCCORMICK MACHINE CO. }

On motion of plaintiff, leave is granted him by the court
10 to amend his petition herein by interlineation.

CHARLES W. WALTHERS
vs.
MCCORMICK MACHINE COMPANY.

On motion, leave is granted by the court to defendant to withdraw its answer herein and to file plea, and this cause is to be submitted to the court on briefs of the parties, defendant to file same in twenty days and plaintiff in forty days.

Thereupon, afterwards, to wit, on the 17th day of Jan'y, 1888, a plea to jurisdiction was filed in said case; which said plea is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

CHARLES W. WALTHER, Plaintiff,
vs.
THE MCCORMICK HARVESTING MACHINE CO., Defendant.

Plea to the Jurisdiction.

Now comes the said McCormick Harvesting Machine Co., defendant herein, and says that this court here ought not to take further cognizance of or sustain the aforesaid action because this defendant says that now and at the commencement of this action the said Charles W. Walther was a citizen and inhabitant of the State of Nebraska and this defendant was a corporation duly organized under the laws of the State of Illinois, and was and is a citizen, resident, and inhabitant of the said State of Illinois, and was not and is not a citizen, resident, or inhabitant of the State or district of Nebraska; that the summons in this action was served on this defendant's agent in the State of Nebraska, where this defendant has an office, said agent being only its local, managing agent for its business in Ne-
11 braska, and this defendant save that this action was brought since the 15th day of March, 1887, and this defendant says that it is not subject to be sued or to be summoned by original process out of this court in this cause in this judicial district; wherefore defendant prays judgment that this action may abate and be dismissed.

THE MCCORMICK HARVESTING
MACHINE CO.,
By WALTER J. LAMB, *Its Attorney.*

DISTRICT OF NEBRASKA:

W. J. Lamb, for said defendant, being duly sworn, says the above plea is not interposed for delay, and that he believes the facts set forth therein to be true.

WALTER J. LAMB.

Subscribed in my presence and sworn to before me this 17th day of January, 1888.

E. D. FRANK, *Clerk.*

Upon the back of said plea appear endorsements in words and figures following, to wit:

No. 51, M. C. W. Walthers *vs.* The McCormick Harvesting Machine Company. Plea to jurisdiction. Filed Jan'y 17, 1888. Elmer D. Frank, clerk. Walter J. Lamb, attorney for defendant.

Thereupon, afterwards, to wit, at the May term of said court, on the 26th day of June, 1888, the following proceedings were had in said case, as appears of record on folio 898, Journal M of said court:

CHARLES W. WALTHERS
vs.
McCORMICK HARVESTER MACHINE COMPANY.

This cause having been heard on the plea in abatement of said defendant, the court, after careful consideration thereof and being fully advised in the premises, doth now, on this day, order
12 and adjudge that said plea in abatement be, and is hereby, overruled. Defendant is ruled to answer in thirty days and plaintiff to reply in forty-five days.

Thereupon, afterwards, to wit, on the 23rd day of Jan'y, 1889, a reply was filed in said case; which said reply is in words and figures following, to wit:

In the Circuit Court of the United States in and for the District of Nebraska.

CHARLES W. WALTHERS, Plaintiff,
vs.
THE McCORMICK HARVESTER MACHINE COMPANY, Def't. } Reply.

Now comes the said plaintiff, and, for reply to the answer of the said defendant heretofore filed herein, says that he denies each and every allegation of new matter in said answer contained.

HARWOOD, AMES & KELLY,
Att'ys for Pl'ff.

STATE OF NEBRASKA, } *ss:*
Lancaster County, }

N. S. Harwood, being first duly sworn, deposes and says that he is one of the attorneys of record of the plaintiff in the above-entitled cause; that plaintiff is a non-resident of Lancaster county, Nebraska, and that the matters and facts set forth in the foregoing reply are true, as he verily believes.

N. S. HARWOOD.

Subscribed in my presence and sworn to before me this 21st day of January, 1889.

[SEAL.] GEORGE SCHAFER,
Notary Public.

Upon the back of said reply appear endorsements in words and figures following, to wit:

No. 51. M. Charles W. Walthers, plaintiff, *vs.* McCormick Harvester Machine Co., defendant. Reply. Filed Jan'y 23, 1889. Elmer D. Frank, clerk.

13 Thereupon, afterwards, to wit, at the January term of said court, on the 25th day of January, 1889, the following proceedings were had in said case, as appears of record on folio 329, Journal N of said court, to wit:

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY. } Trial.

Now come the parties herein, by their attorneys, also come the following-named persons, as jurors, to wit:

1, Martin Warner,	5, John Jack,	9, Paul Peterson,
2, W. W. Crandall,	6, J. B. Sedgwick,	10, Lynn Nelson,
3, Wm. Anderson,	7, J. S. Bennett,	11, S. L. Thomas,
4, John Schuler,	8, John Pohlman,	12,

And, both parties agreeing to try said cause before said eleven jurors, who were duly empanelled and sworn according to law, *and* thereupon, after hearing the evidence in part and the time having arrived for the adjournment of the court and the trial of this cause not being finished, the same was continued until ten o'clock to-morrow morning.

Thereupon, afterwards, to wit, at the said January term of said court, on the 26th day of Jan'y, 1889, the following proceedings were had in said case, as appears of record on folio 331, Journal N of said court, to wit:

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY. } Trial Continued.

On this day again come the parties hereto, by their attorneys; also come the jury empaneled and sworn herein. Said jury heard further testimony, and, the time having arrived for the ad-
14 journment of the court and the trial of this cause not being finished, said jury was allowed to separate until the coming in of court Monday morning.

Thereupon, afterwards, to wit, at the said Jan'y term of said court, on the 28th day of Jan'y, 1889, the following proceedings were had in said case, as appears of record on folio 336, Journal N of said court, to wit:

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY. } Cause Submitted to Jury.

On this day again come the parties hereto, by their attorneys; also comes the jury empaneled and sworn herein. Said jury, after having heard the remaining evidence and the argument of counsel and charge of the court, retire to their room, in charge of a bailiff duly sworn, for deliberation.

Thereupon, afterwards, to wit, at the said January term of said court, on the 30th day of January, 1889, the following proceedings were had in said case, as appears of record on folio 344, Journal N of said court, to wit:

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY. } Verdict.

On this day again come the parties hereto, by their attorneys; also comes the jury empaneled and sworn herein into open court and present to the court their verdict, which is in words and figures following, to wit:

"In the Circuit Court of the United States, District of Nebr."

15 CHAS. W. WALTHERS, Plaintiff,
vs.
MCCORMICK HARVESTER MACHINE COMPANY, Defendant. } Verdict.

We, the jury in this cause, being first duly sworn, do find for the plaintiff in this cause and assess his damages in the sum of $1,338.57.

JOHN JACK, *Foreman.*

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTER MACHINE COMPANY. } Judgment on Verdict.

The jury in this action having on this day rendered a verdict for the plaintiff and against the defendant and assessed the plaintiff's damages at the sum of thirteen hundred and thirty-eight dollars and nfty-seven cents ($1,338.57), on motion of said plaintiff, by Harwood, Ames and Kelly, his attorneys, it is considered, ordered, and adjudged by the court that the plaintiff is entitled to judgment on said verdict, and that said plaintiff, Charles W. Walthers, have and recover of and from said defendant, The McCormick Harvester Machine Company, the said sum of thirteen hundred and thirty-eight dollars and fifty-seven cents, together with $—, costs herein expended, and that execution issue therefor.

Thereupon, afterwards, to wit, on the 1st day of February, 1889, a motion for a new trail was filed in said case; which said motion is in words and figures following, to wit:

In the Circuit Court of the United States, District of Nebraska.

CHARLES W. WALTHERS, Plaintiff,
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY, Defendant.

Motion for a New Trial.

Comes now the defendant and moves the court to set aside the verdict and for a new trial in the said action for the following reasons:

16 1. For error of law occurring at the trial.

2. Because the court erred in its instructions given to the jury in the said cause.

3. Because the verdict in said cause is not sustained by the evidence in three essential particulars, to wit: (*a*) That there is no evidence of any malice on the part of the defendant in instituting the suits of attachment, which attachments were afterwards dissolved; (*b*) that it appears by the uncontradicted testimony in the case that there was probable cause for the swearing out of those attachments; (*c*) because it appears from the uncontradicted testimony in the case that C. W. Walthers, defendant in the said action, had fraudulently incurred the obligation upon which the attachments were issued, and so that, as a matter of law, there was probable cause for the taking out of the attachments, although in alleging the cause of attachment the grounds existing for the attachment may not have been covered by the ground upon which the attachments were taken out.

4. That the court erred in its instructions to the jury wherein it suggested to the jury that the defendant allow the plaintiff the sum of $5,000.00 in this, to wit, that the court suggested, for instance, that if it should find for the plaintiff $5,000.00 they would then deduct the amount of the defendant's judgment, $3,661.50; that they would then return a verdict for the plaintiff for $1,338.50, which suggestion the jury accepted as the opinion of the court and acted upon it and allowing a verdict for that amount, and the defendant insists that the court erred in its instructions to the jury in the manner in which said suggestion was made.

5. That the court erred in its instruction to the jury in what was said touching the action of the court in the dissolution of the attachment; that the court should have said to the jury upon

17 that point that there was probable cause and there was a good ground of attachment by reason of the defendant Walther therein having fraudulently retained the moneys of the plaintiff therein, but that the plaintiff in taking out the said attachment failed to properly set forth such ground for the attachment.

6. That the verdict is excessive and is not sustained by any evidence; the undisputed evidence to be that Walther was insolvent at the time of the attachment; that he was about to make an assignment; that he had no means of paying creditors; that in his list of liabilities there were 19 or 20 whom he owed that could obtain jurisdiction in the justice court and obtain judgment in three days, and that his financial standing was such that he was not entitled to credit at the time of the attachment, and that the sum of $5,000.00 allowed the plaintiff herein is unwarranted by the testimony.

Respectfully submitted,

LAMB, RICKETTS & WILSON,
Defendants' Attorneys.

Upon the back of said motion appear endorsements in words and figures following, to wit:

No. 51, M. Charles W. Walthers, plaintiff, *vs.* The McCormick Harvesting Machine Company, defendant. Motion for new trial. Filed Feb'y 1, 1889. E. D. Frank, clerk. Lamb, Ricketts & Wilson, attorneys for defendant.

Thereupon, afterwards, to wit, at the March term of said court, on the 11th day of March, 1889, the following proceedings were had in said case, as appears of record on folio 384, Journal N of said court:

CHARLES W. WALTHERS
vs.
THE MCCORMICK HARVESTING MACHINE COMPANY.
} Motion for New Trial Overruled.

18 This cause having been heard on the motion of defendant for a new trial and to set aside the judgment and verdict herein, and the court being fully advised in the premises, it is now on this day ordered and adjudged that said motion be, and is hereby, overruled, and that the judgment heretofore entered herein be and remain absolute.

Thereupon, afterwards, to wit, on the 21st day of March, 1889, a bond was filed in said case; which said bond is in words and figures following, to wit:

Know all men by these presents that we, Robert Binford and Kent K. Hayden, are held and firmly bound unto Chas. W. Walthers in the full and just sum of five thousand —, to be paid to the said Chas. W. Walthers, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between Chas. W. Walthers and The McCormick Harvesting Machine Co., judgment was rendered against the said McCormick Harvesting Machine

Company, and the said McCormick Harvesting Machine Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Chas. W. Walthers citing and admonishing — to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said McCormick Harvesting Machine Company shall prosecute them on writ of error to effect and answer all damages and costs if
19 they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

R. BINFORD.
KENT K. HAYDEN.

Approved by—
ELMER S. DUNDY, *Judge.*

Upon the back of said bond appear endorsements in words and figures following, to wit:

No. 51, M. United States circuit court, district of Nebraska. The McCormick Harvesting Machine Co. *vs.* Charles W. Walthers. Bond. Filed March 21, 1889. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 21st day of March, 1889, a writ of error was allowed in said case and a citation issued thereon, of which said writ of error and citation the following are the originals:

20 UNITED STATES OF AMERICA, } ss:
District of Nebraska, }

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The McCormick Harvesting Machine Company, plaintiff, and Chas. W. Walthers, defendant, a manifest error hath happened, to the great damage of the said plaintiff in the said cause, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 21st day of March, 1889.

[Seal United States Circuit Court, District of Nebraska.]

ELMER D. FRANK, *Clerk.*

Allowed by—

ELMER S. DUNDY, *Judge.*

20½ [Endorsed:] No. 51, M. United States circuit court, district of Nebraska. The McCormick Harvesting Machine Company *vs.* Charles W. Walthers. Writ of error. 1,338.57. Judg't Jan. 30, '89. Filed Mar. 21, 1889. Elmer D. Frank, clerk.

21 THE UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

To Chas. W. Walthers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein The McCormick Harvesting Machine Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Omaha, this twenty-first day of March, 1889.

ELMER S. DUNDY, *Judge.*

[Endorsed:] No. 51, M. United States circuit court, district of Nebraska. The McCormick Harvesting Machine Company *vs.* Charles W. Walthers. Citation. Filed Mar. 23, 1889. Elmer D. Frank, clerk.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 22nd day of March, 1889, I received this citation and on the 22nd day of March, 1889, I served the same upon the within-named Chas. W. Walthers, defendant in error, in Lancaster county, State and district of Nebraska, by delivering to and leaving with N. S. Harwood, att'y for said defendant in error, a certified copy thereof, with all the endorsements thereon.

ELLIS L. BIERBOWER,
United States Marshal for the District of Nebraska,
By A. G. HASTINGS,
Deputy United States Marshal.

Service	$2 00
Mileage	12
Marshal's costs	$2 12

Paid by pl'ff's att'y.

[Endorsed:] Filed Mar. 23, 1889. Elmer D. Frank, clerk.

22 UNITED STATES OF AMERICA, } ss :
District of Nebraska, }

By virtue of the foregoing writ of error and in obedience thereto I, Elmer D. Frank, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios from one to 23 contain true and faithful transcripts of all the pleadings and proceedings of record and on file in my office as said clerk in the case of Charles W. Walthers *vs.* The McCormick Harvester Machine Company, and that a copy of the writ of error and citation has been lodged and remains in my said office.

Witness my hand and the seal of said court, at Omaha, this 3rd day of June, 1889.

Seal United States Circuit Court, District of Nebraska.

ELMER D. FRANK, *Clerk.*

Endorsed on cover: Nebraska C. C. U. S. No. 1402. The McCormick Harvesting Machine Company, plaintiff in error, *vs.* Charles W. Walthers. Filed October 17, 1889.

Office Supreme Court U. S.
FILED.
JAN 25 1890
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court.

—OF THE—

UNITED STATES.

OCTOBER TERM, 1889.

NO. 1402.

THE MCCORMICK HARVESTING MACHINE COMPANY.
Plaintiff in Error
vs.
CHARLES W. WALTHERS,
Defendant in Error

BRIEF FOR PLAINTIFF IN ERROR.

WALTER J. LAMB.
ARNOTT C. RICKETTS.
HENRY H. WILSON.
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT

—OF THE—

United States.

OCTOBER TERM, 1889.

THE McCORMICK HARVESTING MACHINE COMPANY.
Plaintiff in Error

vs.

CHARLES W. WALTHERS,
Defendant in Error

NO. 1402.

The motion of the defendant in error to dismiss because the judgment is less than Five Thousand Dollars, must be denied for two reasons:

I.

First—Because the matter in controversy in this court involves more than Five Thousand Dollars.

The defendant in error sought to recover against the plaintiff in error in the court below the sum of $10,-500 for suing out an alleged false and malicious attachment against the defendant in error (Record 1 to 3), the plaintiff in error pleaded to the merits denying all and every liability whatever, and set up two subsisting valid judgments held by the plaintiff in error against the defendant in error amounting to $957.93 and $2,-894.01, respectively, as a set-off or counter-claim (Record 6 and 7). To this a reply of general denial was filed (Record 8).

The defendant in error recovered a verdict and judgment against the plaintiff in error in the sum of $1,338.57.

It is conceded by the defendant in error that the judgments of the plaintiff in errror were allowed by the jury and deducted from the amount found due the defendant in error, on his alleged claim for malicious prosecution.

The question then is, how much has the defendant in error recovered against the plaintiff in error by reason of the alleged false and malicious prosecution? There cannot be a doubt that it is the sum of the two judgments set out in the answer as a set-off and the amount of the verdict, or $5,190.51. This would have been the verdict had there been no set-off interposed. We contended in the court below, and now contend here, that the defendant in error was not entitled to recover anything on his alleged cause of action: We

complain just as much against that portion of the jury's verdict which paid the defendant in error the sum of $3,851.94 as alleged damages out of our set-off as we do of $1,338.57 additional sum which they did not have it in their power to pay. It seems to us the amount here in controversy must be measured by the whole record and not by the amount of the verdict and judgment alone, as was said in Bradstreet Company vs. Higgins, 112 U. S. 227. In other words, by what would be the effect on the rights of the respective parties by a reversal of the judgment. In this case it is not difficult to see that a reversal would wipe out first the $1,338.57 of verdict and judgment and would reinstate to the plaintiff in error his two judgments against the defendant in error, aggregating $3,851.94, or from the standpoint of mathematics the plaintiff in error would be just $5,190.51 better off than with the verdict and judgment against him. We have examined all that the court has said on this subject including the citations of our adversaries, and as we understand and interpret the same, this court has never passed squarely on the question here raised. The construction here contended for is supported by reason and logical consequences.

II.

SECOND—But whether the matter here in controversy exceeds the sum of Five Thousand Dollars or not, there can be no doubt that this court still has jurisdiction to review all questions of jurisdiction raised in the Circuit Court under the express provisions of

"An act to provide for writs of error or appeals to the Supreme Court of the United States in all cases involving the question of the jurisdiction of the courts below.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in all cases where a final judgment or decree shall be rendered in the Circuit Court of the United States, in which there shall have been a question involving the jurisdiction of the court, the party against whom the judgment or decree is rendered shall be entitled to an appeal or writ of error to the Supreme Court of the United States to review such judgment or decree without reference to the amount of the same; but in cases where decree or judgment does not exceed the sum of Five Thousand Dollars, the Supreme Court shall not review any question raised upon the record, except such question of jurisdiction; such writ of error or appeal shall be taken and allowed under the same provisions of law as apply to other writs of rrror or appeals, except as provided in the next following section.

SECTION 2.—That in cases of judgments or decrees mentioned in the first section of this act, and heretofore rendered, where the period of limitation for taking writs of error or appeals in other cases has not expired, appeals or writs of error may be sued out at any time within one year after the passage of this act.

Approved February 25, 1889."

The foregoing act may be found in Vol. 25 U. S. Stat. at Large, Chapter 236, Page 693.

This disposes of the motion of the defendant in error to the jurisdiction of this court—on account of the amount here brought in controversy. We do not understand that the merits of the case which may be raised upon this record, can here and now be disposed of on the motion of the defendant in error. Nor does

the case of Semple vs. Hagar, 4 Wall. 431, support any such doctrine.

Respectfully submitted,

WALTER J. LAMB.
ARNOTT C. RICKETTS.
HENRY H. WILSON.
Attorneys for Plaintiff in Error.

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IN THE

Supreme Court.

—OF THE—

UNITED STATES,

OCTOBER TERM, 1889.
NO. 1402.

THE McCORMICK HARVESTING MACHINE COMPANY,
Plaintiff in Error.
vs.
CHARLES W. WALTHERS,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

N. S. HARWOOD.
JOHN H. AMES.
Attorneys for Defendant in Error.

IN THE

SUPREME COURT

—OF THE—

UNITED STATES,

OCTOBER TERM, 1889.

NO. 1402.

THE McCORMICK HARVESTING MACHINE COMPANY,
Plaintiff in Error.
vs.
CHARLES W. WALTHERS,
Defendant in Error.

This is a motion to dismiss the writ of error, or to affirm the judgment of the Circuit Court, for the reason that the court is without jurisdiction, the amount of the judgment being less than Five Thousand Dollars; and the jurisdictional facts appearing on the record, which contains only fifteen pages of printed matter.

The action was brought in the Circuit Court for the District of Nebraska, by Charles W. Walthers, a citizen and resident of the State of Nebraska, against the McCormick Harvesting Machine Company, a corporation duly organized under the laws of the State of Illinois, having a general managing agency within the State of Nebraska, upon whom service was had, alleging damages at Ten Thousand Five Hundred Dollars ($10,500), for a certain malicious action theretofore brought by the said defendant. The defendant answered, pleading justification for the bringing of said action, and alleging a set off or counter-claim in the sum of Three Thousand Eight Hundred Ninety-one and Ninety-four One-hundredths Dollars ($3,891.94). Afterwards the defendant (plaintiff in error) filed the following plea in abatement:

"In the Circuit Court of the United States, District of Ne-
" braska.

Charles W. Walthers,
Plaintiff
vs.
The McCormick Harvesting Machine Company,
Defendant.

" Plea to the jurisdiction.

" Now comes the said McCormick Harvesting Machine Com-
" pany, defendant herein, and says that this court here ought
" not to take further cognizance of or sustain the aforesaid action
" because this defendant says that now and at the commence-
" ment of this action the said Charles W. Walthers was a citizen
" and inhabitant of the State of Nebraska and this defendant
" was a corporation duly organized under the laws of the State
" of Illinois, and was and is a citizen, resident, and inhabitant of
" the said State of Illinois, and was not and is not a citizen, resi-
" dent or inhabitant of the State or District of Nebraska; that
" the summons in this action was served on this defendant's
" agent in the State of Nebraska, where this defendant has an
" office, said agent being only its local managing agent for its
" business in Nebraska, and this defendant says that this action
" was brought since the 15th day of March, 1887, and this defend-

" ant says that it is not subject to be sued or to be summoned by " original process out of this court in this cause in this judicial " district; wherefore defendant prays judgment that this action " may abate and be dismissed.

THE MCCORMICK HARVESTING MACHINE CO.,
By WALTER J. LAMB, Its Attorney."

Hearing was had on this plea in abatement, and the court rendered the following judgment:

" Charles W. Walthers
vs.
McCormick Harvesting Machine Company.

" This cause having been heard on the plea in abatement of " said defendant, the court, after careful consideration thereof " and being fully advised in the premises, doth now, on this day, " order and adjudge that said plea in abatement be, and is here- " by overruled. Defendant is ruled to answer in thirty days and " the plaintiff to reply in forty-five days."

Thereupon issues were joined, and the cause submitted to a jury, who, on the 3d day of January, 1889, returned in court the following verdict:

" In the Circuit Court of the United States, District of Ne- " braska.

" Charles W. Walthers, Plaintiff.
vs.
" McCormick Harvesting Machine Company, Defendant. } Verdict:

" We, the jury in this cause, being first duly sworn, do find " for the plaintiff in this cause and assess his damages in the " sum of $1,338.57. JOHN JACK, Foreman."

On the same day the court rendered judgment for the said plaintiff (defendant in error) in the sum of Thirteen Hundred

Thirty-eight and Fifty-seven One-Hundredths Dollars($1,338.57). No bill of exceptions was preserved, and the only error capable of consideration here, if any, is the judgment of the circuit court on the plea in abatement.

It was asserted that the defendant in error, being a citizen of Nebraska, and the plaintiff in error a citizen of the State of Illinois, the action could not be brought in the District of Nebraska.

II.

As we understand the statute and authorities, the sole matter which determines the jurisdiction of this court of a writ of error to review the judgment of a circuit court is the amount in controversy here. If that amount is Five Thousand Dollars or less it is immaterial what errors apparent in the record, and otherwise assignable, may exist, or whether they arise upon a plea or motion to the jurisdiction or otherwise, because this court not having jurisdiction of the writ, the record being not properly removable thither, is powerless to inquire concerning them. We state the proposition in this form because the plaintiff in error evidently sued out the writ in this case upon the supposition that this court has jurisdiction thereof without reference to the amount in controversy here, when the record discloses that one of the assignable errors may be the ruling of the circuit court upon a plea or motion to the jurisdiction. Since, however, the statute does not grant the writ for the review of alleged error upon any particular question or class of questions, but to review "All final judgments of any Circuit Court" involving not less than a specified amount in controversy, the writ, if retained at all, must be held for the review of the judgment, that is, the entire record, and hence, if the converse of the foregoing proposition were adopted, when the record disclosed a ruling upon a plea or motion to the jurisdiction of the circuit court, an important exception would be imported into the statute by construction, and all that would be requisite to confer jurisdiction upon this court in any case would be to present such a plea or motion below.

III.

In as much as the defendant in error, the plaintiff in the court below, does not seek a review, the amount claimed as damages in his petition or declaration is unimportant.

Walker vs. United States, 71 U. S. 168.

IV.

If, however, the plaintiff in error should contend that the amount in controversy here exceeds Five Thousand Dollars, an application of the rule laid down in Hilton vs. Dickinson, 108 U. S. 165, will demonstrate its mistake. In that case this court reviews all previous decisions relative to this question, and doubtless with the intention of setting the matter finally at rest, under existing legislation, prescribes a formula by the application of which counsel, whether for the plaintiff or defendant, may readily determine whether a given judgment is reviewable here. That formula as published upon page 175 of the report is as follows:

" Under this rule we have jurisdiction of a writ of error or " appeal by a plaintiff below when he sues for as much as or " more than our jurisdiction requires and recovers nothing, or " recovers only a sum which, being deducted from the amount or " value sued for, leaves a sum equal to or more than our jurisdic- " tional limit, for which he failed to get a judgment or decree. And " we have jurisdiction of a writ of error or appeal by a defendant " when the recovery against him is as much in amount or value " as is required to bring a case here, and when, having pleaded a " set-off or counter-claim for enough to give us jurisdiction, he is " defeated upon his plea altogether, or recovers only an amount " or value which, being deducted from his claim as pleaded, " leaves enough to give us jurisdiction, which has not been " allowed."

Manifestly, under this rule, if the record disclosed that the plaintiff in error was "defeated altogether" upon his set-offs, amounting to $3,891.94, this court would not have jurisdiction

of a writ of error issued out in its behalf, but the record does not disclose that the set-offs, or either of them, were defeated even in part.

The plaintiff sued for damages in the amount of $10,500 and recovered a judgment for $1,338.57, hence the presumption must be, in the absence of any ruling by the circuit court excluding evidence in support of the set-offs from the consideration of the jury that the latter allowed the set-offs as claimed and deducted the same from the amount for which they would otherwise have returned a verdict in favor of the plaintiff So that it appears, to quote from another portion of the opinion in Hilton vs. Dickinson *supra*, that the object of the plaintiff in error in suing out this writ " is not to secure what he has already got, but to get more," or to speak more accurately with reference to the case at bar, is not to establish its claims which have already been fully allowed, but to defeat the recovery by the defendant in error of a sum in addition thereto to which the circuit court has adjudged him entitled.

We do not see that this case differs in any essential respect from Sampson et al. vs. Welsh et al., 24 How. 207. There the plaintiffs sued for damages sustained to a cargo of coffee shipped on board the ship Sarah, and the defendants pleaded a set-off amounting to $1,231.51. The plaintiffs recovered judgment for $1,071.27, and the defendants appealed. The jurisdictional amount then being $2,000, the appeal was dismissed. To the same effect is Lamar vs. Micou 104 U. S. 465.

V.

We are able to reconcile the apparently direct conflict between the foregoing authorities and the closing paragraphs of the opinion in Bradstreet Company vs. Higgins, 112 U. S. 227, only upon the supposition that the writer had in his mind a case in which like Ryan vs. Bindly, 68 U. S. 66, the record discloses affirmatively that by reason of some ruling or rulings of the circuit court, in the progress of the trial or upon demurrer, a defendant is wholly precluded from setting up or proving his set-off

or counter-claim so as to be able to avail himself thereof for the purpose of reducing the amount of the plaintiff's recovery. In such case it could perhaps be contended that this court could ascertain from an inspection of the record that but for the error or errors of the circuit court the defendant might have defeated the plaintiff entirely and have recovered a money judgment in his own favor so as to except the same from the rule announced in Lamar vs. Micou *supra*, that an appeal or writ of error does not lie in favor of a defendant whose counter-claim or set-off could only have operated to reduce the amount of the plaintiff's recovery. Otherwise the decision in Bradstreet Company vs. Higgins must be regarded as reaffirming the doctrine of Wilson vs. Daniel, 3 Dall. 401, long since overruled, that the amount in controversy in circuit court, and not the amount in controversy here determines the jurisdiction of this court. If the doctrine announced by Mr. Chief Justice Waite in Bradstreet Company vs. Higgins, shall be adhered to without limitation or qualification, then in any case in which a defendant pleads in the circuit court a counter claim for a sum which, added to the amount of the plaintiff's recovery *therein*, exceeds $5 000 he may have the judgment reviewed here and, upon the rule of equity laid down in Hilton vs. Dickinson *supra*, in any case in which the defendant recovers a judgment in his favor in the circuit court for a sum which, added to the amount of the plaintiff's claim *therein* exceeds $5,000, the latter may have the judgment reviewed here. It is perhaps justifiable to say, however, that the expressions of Mr. Chief Justice Waite in this opinion, which are now under discussion, are not the enunciation of any principle necessary to the decision of that case and, as *obiter dicta*, are not entitled to the weight, because they presumably did not receive the consideration from their author, which they would otherwise have had.

VI.

Finally, the only assignable error in any event is the ruling of the court upon the plea in abatement. The jurisdiction of the circuit court in this case " is founded only on the fact that

the action is between citizens of different states" and the act of March 3d, 1887, provides that in such cases "Suit shall be brought only in the district of the residence of either the plaintiff or the defendant." In this respect this act does not differ from that of 1875, which has received a settled construction and there can be no question therefore as to the jurisdiction of the circuit court.

Wilson vs. Western Union Tel. Co , 34 Fed. Rep. 561.

Govin vs. Vance, 33 Fed. Rep. 84.

Foster vs. Chicago, 32 Fed. Rep. 673.

Loomis vs. Coal Co., 33 Fed. Rep. 353.

Railroad Co. vs. Railroad Co., 33 Fed Rep. 585.

Swayne vs. Boylston Ins. Co., 35 Fed. Rep. 1

We think, therefore, that should it be held that the amount in controversy is sufficient to give this court jurisdiction, still the question is one that should be summarily decided within the rule of Semple vs. Hagar, 71 U. S. 433, and that the motion of defendant in error to affirm should be granted.

N. S. Harwood.

John H. Ames.

Attorneys for Defendant in Error.